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**Exploring the Sociotechnical Dynamics of the Creative Commons  
Licenses: The Case of Open Content Filmmakers**

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**PhD in Science and Technology Studies**

**The University of Edinburgh**

**2015**

## **Declaration**

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Evangelia Giannatou

## **Abstract**

Networked information technologies and especially the internet, have brought about extensive changes and re-arrangements in cultural production, distribution, commercialisation and consumption of creative content. As an attempt to create a type of copyright licenses better suited for the online environment, the Creative Commons (CC) organisation has launched a license suite that allows creators to openly distribute and share their work under varying levels of restrictions. This thesis aim is to explore the motivations, expectations and understandings of both users and non users of CC licenses within the Independent Filmmaking Community. The research maps out the strategies and diverse business models that users of the licenses develop around their implementation but also the problems and conflicts that arise for both users and non users of the licenses. It therefore sheds light on the processes of adoption, implementation and subsequent fragmentation of the socio-legal innovation that is the CC license suite.

While Free and Open Source models of software development (FOSS) have been thoroughly researched, little is known about how other content creators incorporate open licensing strategies within their creative fields. This research aims to address this gap in the literature through the examination of the use of CC licenses by Open Content Filmmakers. Building on theoretical and empirical research in Science and Technology Studies my aim is to analyse the legal innovation of CC licenses by focusing on how they are embedded within the everyday practices of open content filmmakers. By applying the Social Shaping of Technology framework and more specifically the Social Learning perspective, I examine the ways different actors ascribe meaning and conceptualise the role and usefulness of the licenses for their creative practices. Filmmakers negotiate the licenses' significance through their interactions with diverse actors. These negotiations entail conflicting interpretations as different actors often have different agendas, commitments and resources, resulting in the transformation of both the licenses' stated goals and of the perceived affordances of digital

technologies. Drawing on multi-sited ethnography and rich qualitative data, this thesis captures the processes of learning by doing and learning by interaction, as filmmakers seek to find an appropriate way of applying the licenses, situating them within their localised creative endeavours through trial and error practices. The analysis of empirical evidence reveals how independent filmmakers navigate between ideological imperatives and practical considerations in order to form distinct, heterogeneous configurations that work for them, instead of outright adopting a homogeneous generic vision for how copyright should be applied in the digital environment.

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## **List of Abbreviations**

ANT: Actor Network Theory

ASOA: A Swarm of Angels

BY: Attribution

CC: Creative Commons

CCBFF: Creative Commons Barcelona Film Festival

CMC: Computer Mediated Communication

CDPA: Copyright, Design and Patents Act

CTEA: Copyright Term Extension Act

DIY: Do-It-Yourself

DMCA: Digital Millennium Copyright Act

DRM: Digital Rights Management

FLOSS: Free-Libre Open Source Software

FSF: Free Software Foundation

GNU GPL: GNU General Public License

ICTs: Information and Communication Technologies

IP: Intellectual Property

IT: Information Technology

NC: Non-Commercial

ND: Non-Derivative

OCF: Open Content Filmmaking

OCFs: Open Content Filmmakers

SA: Share-Alike

SCOT: Social Shaping of Technology

SLTI: Social Learning in Technological Innovation

STS: Science and Technology Studies

SST: Social Shaping of Technology

TPM: Technical Protection Measures

TRIPS: Trade Related Aspects of Intellectual Property Rights

WCT: WIPO Copyright Treaty

WIPO: World Intellectual Property Organisation

# Chapter 1

## Introduction

### 1.1 Problem Statement

There is a paradox lying between the theory and the actual practices characterising the new information society and economy. While most analysts celebrate the apparently infinite possibilities for instant global communication, user innovation and information sharing provided by digital networked technologies, it appears that many of these new opportunities are being more and more constrained by an extension of Intellectual Property (IP) Law, an unprecedented fencing of the public domain and the increasing commodification of information through the lobbying efforts of the mainstream content industries. Intellectual property products form the core of the new economy of digital technology, communications and entertainment. The current owners of intellectual property material, namely the content industries, are commonly accused by proponents of free and open culture as responding to the challenges of new digital technologies by pushing the boundaries of intellectual property to the expense of the public domain and therefore to the detriment of the general public. Legislative changes that extend and strengthen IP Law are therefore criticised for suppressing the possibilities for cultural and technological innovation that can occur in the digital media.

In a range of literature<sup>1</sup>, mainly coming from new media and socio-legal studies, there has been extensive discussion of the disruptive and transformative

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<sup>1</sup> Anderson, C. (2006) *The Long Tail: Why the Future of Business is Selling Less of More*, New York: Hyperion  
Benkler, Y., (2006) *The Wealth of Networks: How Social Production Transforms Markets and Freedom*, Yale: University Press.  
Howe, J. (2009) *Crowdsourcing: Why the Power of the Crowd is Driving the Future of Business*, California: Three Rivers Press  
Jenkins, H. (2008) *Convergence Culture: Where Old and New Media Collide*. NY: University Press.

capabilities of new technologies. Networked, digital technologies are celebrated for bringing about a new paradigm for cultural production based on the principles of collaboration, inclusivity and decentralisation, thereby denoting a radical and complete break from the previous hierarchical, bureaucratic and centralised organisational structures. These accounts largely share the view that the widespread use of new ICTs will cause a radical discontinuity from established practices, often portrayed in a rather straightforward and unproblematic way. Nevertheless, as many socio-legal scholars<sup>2</sup> point out, all these perceived opportunities for revolutionary change run the risk of not reaching their full potential because of the roadblocks created from an out of balance and disproportionally strengthened IP law. Such maximalist approaches to intellectual property and more specifically to copyrighted material are causing reactions of extreme concern because of their implications for creativity, innovation, self-expression and even for the future of our culture as a whole (Lessig 2001; Boyle 2008). One of the responses that aim to provide some remedies for what is regarded as “copyright out of control” has been the launch of an alternative type of copyright licenses: namely Creative Commons licenses.

Creative Commons (CC) is a licensing system under which creators or producers of a work offer some of their rights to the general public so that they can re-use their work, but only under certain specified conditions. The Creative Commons organisation and licenses are dedicated to building a flexible copyright regime that would encourage more open innovation and, in the cultural content

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Leadbeater, C., (2008) *We-think: Mass Innovation, Not Mass Production: The Power of Mass creativity*. London: Profile Books Ltd.

Rheingold, H. (2002) *Smart Mobs: The Next Social Revolution*. Cambridge: Basic Books

Shirky, C. (2008) *Here Comes Everybody: The Power of organizing Without Organisations*, New York: Penguin.

Tapscott, D. & Williams, A. D., (2006) *Wikinomics: How Mass Collaboration Changes Everything First*, London: Atlantis Books.

<sup>2</sup> Carroll, M. W., (2005) *The struggle for Music Copyright*, Villanova Law/ Public Policy Research Paper No. 2005-7

Fitzgerald, B., O'Brien, D., Shi, S.X. and Gao, F. (2008) *Copyright Law, Digital Content and the Internet in the Asia-Pacific*, Sydney: University Press.

Lessig, L. (2004) *Free Culture: How Big Media Uses Technology and The Law to Lock Down Culture and Control Creativity*, The Penguin Press: New York.

industry would promote legal sharing, remixing and re-use of creative work (Wang 2008). Together with digital technologies that provide the tools to put together existing works, these licenses are meant to provide tools needed for creative authorship to occur at many different levels of cultural creativity and they are regarded and promoted as having various advantages including ease of use, widespread adoption, choice and flexibility. What is also particularly interesting about these licenses is the emergence of social movement dynamics committed to their development, adoption and diffusion. The widespread endorsement of CC licenses by both amateur and professional creators demonstrate how the general public is getting increasingly involved in the dialogue concerning the future of copyright.

Looking beyond simplistic (both techno-utopian and dystopian) discourses, however, the relation between law, society and technology involves complex interactions, which are far from straightforward to trace. It is therefore important to investigate the adoption and implementation of Creative Commons licenses and their promised potential to clarify and simplify the process of producing and distributing digital creative content. This thesis, takes up this task. It aims to investigate the whole trajectory of CC licenses' adoption by independent filmmakers who choose to openly distribute their films, without neglecting to symmetrically examine also the processes of, and reasons for resistance and opposition towards the licenses' implementation.

This research project applies the Social Learning in Technological Innovation framework (Sørensen 1996; Williams, Stewart and Slack 2005) to the study of the adoption and domestication of the legal innovation that is the Creative Commons licensing suite. The Social Learning perspective, as part of the Social Shaping of Technology (SST) approach (MacKenzie & Wajcman 1985), provides insightful and flexible conceptual tools that facilitate the exploration of the interactions between different sets of actors through extended periods of time and in different settings. Creative Commons proponents claim that copyright law, instead of placing barriers to innovative ways of using and creating content

with digital technologies, needs to embrace such alternative practices and come up to date with the novel requirements and opportunities arising in the new digital media and economy. How well though does the CC project itself live up to the creators' requirements and how do practitioners situate the licenses in their everyday creative practices?

## 1.2 Research Framing and Aims

The Creative Commons project was inspired by the Free Software Foundation's GNU General Public License for Free-Libre Open Source Software (FLOSS). Yet while the commercial viability and competitiveness of FLOSS is by now indisputable, CC licenses are mostly regarded by industry players as suitable only for amateur creators who do not seek to make a profit out of their CC licensed works. It is true that the largest percentage of CC adopters are non commercial content creators. However, we can increasingly witness how CC licenses are being used to construct innovative business models for the production and distribution of creative works from professional content creators.

Collaborative creation of software is by now a well-established and acknowledged mode of production under the FLOSS paradigm. On the other hand, the extension of such collaborative practices to different types of creative content such as music, literature and film remains a fairly new and unexplored phenomenon. Open Content Filmmaking (OCF), in particular, represents a special case compared to other creative content because of the higher costs involved, the various kinds of expertise required and the multiple intermediaries who are needed for its production and distribution. Open content filmmaking does share many similarities with FLOSS, such as the massive collaboration of different actors within a shared creative space and of course the fact that new ICTs and especially the Internet enabled them both. But there are also several important differences and unique characteristics that set OCF apart from open software development. These call for a detailed analysis of the specific context and processes involved in such open content filmmaking projects.

As Cassarino & Geuna (2007) point out, a film, whether it is a documentary, a full-feature, an animation or a short, is a much more complex and consistent artistic creation and consequently the connotations of "openness" would be different than those for software, leading to different business models and



strategies. The variety of expertise needed to produce an open content film also lead to diverse interpretations and goals which are reflected in the production and licensing framework, making an examination of the adequacy of CC licenses in fostering creative innovation imperative.

The questions guiding this investigation of the sociotechnical dynamics of the Creative Commons project within the open content filmmaking community are the following:

**R.Q.1:** What are the factors that motivate independent filmmakers to adopt the Creative Commons licenses and what are the understandings and meanings they ascribe to them?

**R.Q.2:** What are the alternative models for cultural production, distribution and revenue generation that independent filmmakers develop around open content film projects and what role does the adoption of Creative Commons licenses play in such projects?

**R.Q.3:** What are the conflicts, problems and tensions that independent filmmakers have to navigate through in order to develop a sustainable model for open cultural production?

In Chapter 3, I discuss in greater detail the research questions and the specific objectives related to each of them.

The above-mentioned research questions make clear that the purpose of this research is not to provide an encompassing understanding of all the innovative processes related to the cultural production of Open Content Films. The goal is rather to view the licensing system and the user communities as mutually constitutive and therefore capture the interactions and exchanges between innovative business practices (OCF) and legal innovations (CC) as they develop simultaneously by their interconnection. The CC licensing system claims to offer a set of flexible tools which provide a general framework for cultural creation but these tools can also be adjusted and complemented by different sets of

social norms in order to fit into a specific creative context. This project consequently is committed to the investigation of the dynamics, tensions and negotiations within the OCF community.

### **1.3 Thesis Outline**

In Chapter 2, arising from the literature review stage of this doctoral research, I provide an overview of the circumstances that led to the creation of the Creative Commons project along with its principle characteristics, uses and potential shortcomings as they are being reviewed by various analysts. I start by examining the purpose of Copyright Law and present a short historical review of its gradual modifications and how these changes are considered by some as an abusive appropriation of copyright legislation in order to favour the interests of the creative industries. I consequently aim to provide a symmetrical analysis of arguments for and against additional copyright restrictions prompted by digital media and an examination of the role of copyright within the creative industries. I then move on to take a closer look at the Creative Commons project itself presenting the various licensing options, its core principles, goals and characteristics as well as how these licenses are being used to create and consolidate online communities with a special focus on the OCF community. I finally conclude the review of Creative Commons by considering various criticisms that have been raised against the CC project.

The third chapter lays out my theoretical and methodological research framework. It starts with a review of various traditions within the Science and Technology Studies literature. I focus on the Social Shaping of Technology (MacKenzie & Wajcman 1985) approach and in particular the Social Learning in Technological Innovation framework (Sørensen 1996; Williams, Stewart and Slack 2005), which I evaluate as the most useful in guiding my research. I then proceed by elaborating the basic theoretical concepts, such as domestication of technology (Lie and Sørensen 1996; Silverstone et al. 1992), innofusion (Fleck 1988), learning by regulating (Sørensen 1996), and user driven innovation (von Hippel 2005) that will be instrumental to the analysis of the research data. The specifics of the research design form the second part of the third chapter of this thesis. It starts by examining the importance of socio-legal approaches in studying legal phenomena and then goes on to explain in detail the research

strategy, research questions, objectives and methods for data collection and analysis that I have used.

The subsequent three chapters present and discuss the empirical findings of this research. Chapter four explores the factors that motivate filmmakers to adopt a Creative Commons license. It examines independent filmmakers' understandings, beliefs and ultimately grievances with regards to the mainstream filmmaking industry, which is seen to be dominated by powerful intermediaries creating bottlenecks for young and unknown filmmakers who seek to produce and distribute their films. In order to bypass the processes of strict control and the centralisation of resources occurring in the mainstream industry, independent filmmakers take advantage of the affordances of new digital technology tools that allow them to develop innovative creative practices and experimental techniques. Nevertheless, copyright law is still regarded as creating obstacles during both the production and distribution phases of their activities and many therefore choose to turn to the adoption of the Creative Commons licenses, which are seen as the legal counterpart of their digital technology tools.

In chapter five we zoom in closer to the actual practices around the production and distribution of open content film projects. It is here that we examine the innovative strategies and alternative configurations that open content filmmakers develop around their projects. While allowing free access to their films is not a lucrative or sustainable endeavour in itself, they claim that when this is managed properly, it can become the catalyst for recognition of real profitable ventures. Amongst such activities are the selling of products with added value, benefits deriving from building a strong online community willing to support their future endeavours and also the promotion of digital production and distribution platforms targeted towards either their audiences or other filmmakers. What is more, open content filmmakers do not rely exclusively on these alternative arrangements for revenue generation but they very often seek to utilise mainstream industry's structures and distribution methods. They

therefore often switch between open content licensing and traditional full copyright either for different films or even for the same project when distributed by various alternative methods.

Chapter six focuses on the conflicts and tensions surrounding the use of Creative Commons licenses in open films and the factors that contribute to either some projects failing their stated goals or to the perception of the licenses as detrimental for independent filmmakers. Criticisms of the licenses are directed to either practical or ideological problems that filmmakers encountered during the production and distribution of their open content films. It is in this chapter that we also engage in detail with non-use of the licenses, by focusing on independent filmmakers who oppose and resist the licenses' adoption, even when many of them choose to offer free access to their films online.

Finally the concluding chapter of this thesis offers a discussion of the research findings and its overall contributions to knowledge. It starts with a reflection upon my chosen methodology, my subsequent research journey and how these have assisted in shaping the outcome of this research along with transforming some of my own ideas and preconceptions on the issues under investigation. It then proceeds to tie together the three empirical chapters and presents their core findings and knowledge contributions, while the last section provides some final remarks regarding the limitations of my research design and offers suggestions for further research based upon the findings of this thesis.

## **Chapter 2**

### **Literature Review**

#### **2.1 Introduction**

Networked, digital technologies have enabled the emergence of novel forms of creative production, collaboration and participation. They have also challenged current Intellectual Property Laws and their application to the online environment. The increasing tensions between the requirements of the law and the widespread practices of sharing digital resources leaves all major actors in this debate unsatisfied. The mainstream media industries see their rights violated, digital rights advocates criticise and denounce content industry intermediaries for lobbying to extend Intellectual Property Law, the general public feels increasingly alienated, and somewhere within this process the rights of the creators, who are the primary purpose of copyright law, are given minimal attention.

Within this landscape of heated “copyrights”, Creative Commons present their license suite and promote it as a practical solution for the smooth exchange of digital resources, while staying within the boundaries of the law. Creative Commons licenses offer individual creators the ability to calibrate the level of control they wish to maintain over their works, and they claim to facilitate the development of innovative business strategies and open cultural production models for the creators who adopt them. As this doctoral thesis aims to examine such facilitation claims through the eyes and experiences of the practitioners themselves by focusing on the open content filmmaking movement, a review of the relevant literature around the emergence, adoption and limitations of the Creative Commons licensing suite is therefore deemed as essential.

In section 2.2 I will start with providing a brief historical account of the development of copyright law in the UK, since its increasing expansion is regarded as the reason for the emergence of open licensing systems. Section 2.3

attempts to offer a symmetrical review of the arguments in favor and against extensions of copyright, through the views of some of the most prominent actors in this debate. Section 2.4 focuses closer on the relation between the creative industries and copyright law, as well as the reconfigurations that digital technology has enabled within these industries. In section 2.5 I examine the context for the emergence of open content licensing systems, and I subsequently investigate the Creative Commons licensing suite (2.5.1), the elements and forms of the different CC licenses (2.5.2), and the commonly cited reasons for their adoption (2.5.3). Section 2.6 investigates the role that the licenses play in the creation and consolidation of online communities, before focusing on the Open Content Filmmaking movement (2.6.1). Finally section 2.7 presents a set of criticisms, which are often voiced towards the Creative Commons licenses and organisation.

## **2.2 A Brief History of Copyright Law in the UK**

Copyright is a bundle of exclusive rights which is granted to the creator of an original work and include amongst others the right to copy, distribute, publicly display, perform or make derivative works based on the original (MacQueen et al. 2008). The underlying logic for the existence of copyright law is not only to protect the authors' and creators' interests, but also to equally protect the public domain and to promote knowledge, learning and innovation (Einhorn 2004). Copyright has therefore, a significant social function to perform in our society by striking a balance between these two approaches. This should be achieved by providing creators with some protection from infringement in order to maintain the necessary motives for creation and innovation but on the other hand, not offering too much protection that could end up interfering with future creation and dissemination of new works (Pallas Loren 2007). So while copyright rewards individuals for their contributions, this is ideally counterbalanced by the recognition of the interests of the wider public in the free dissemination of certain material under specific circumstances.

Liang (2005) further argues that although copyright was initially conceived as a method to provide incentives for creators, most creators are not usually themselves the owners of their own copyright, which most often gets transferred to intermediaries of the respective industry. What therefore started as a system of balances between creators' private interests and the public domain has been captured and dramatically shifted in favor of media conglomerates, large publishing houses and other industry intermediaries. Garlick (2009) concludes that especially within the digital environment, copyright law signifies a contradiction for creators since its increasingly rigorous enforcement and expansion raises serious legal issues for those who attempt to experiment with the new creativity tools available within the digital environment.

The intense interaction between legal concepts and socio-technical processes is obvious in the case of copyright from the very beginning. It appears that the



concept of copyright and technological change have been intensely interwoven ever since the birth of copyright. Copyright was developed in the early modern period as a response to the growth of printing technology that made possible the rapid proliferation and distribution of written works (MacQueen et al., 2008). The Statute of Anne was the first copyright law to be enacted in the United Kingdom in 1709. Ever since, changes in the copyright law have followed technological advancements that influence how literary and artistic works are being created and distributed. In the 19th century, copyright was extended in order to cover works of art and drama, and the length of copyright term began to increase following the logic that authorship needs to be rewarded and the family and descendants of the author should not have to suffer for their relative's art (MacQueen et al. 2008).

On the international level, it was soon recognized that as international markets started to flourish, the extension of copyright protection beyond one's national territory should be negotiated. And thus, the Berne Convention for the Protection of Literary and Artistic Works 1886 established a multinational system of reciprocity of rights, which the UK implemented in the Copyright Act of 1911 (Sumpter 2006). While offering a more general approach to copyright, the 1911 Act also responded to technological change by including a new subject to be protected by copyright: sound recordings. The Copyright Act of 1956 extended protection to films, broadcasts and typographical arrangements of published editions of works. The Copyright, Design and Patents Act (CDPA) of 1988, was also a response to technological developments. Once again new ways of creating and distributing works like computer programs, software and cable and satellite broadcasting, were recognized (MacQueen et al. 2008). But the most important factor prompting the implementation of CDPA was not the existence of new types of works per se, but rather the novel ways that technology allowed for works to be copied easily and on a large scale, namely through photocopying, videotaping and recording technology.

Looking at the international developments, the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) of 1994 contains a number of provisions on copyright that member states of the World Trade Organization have to comply with. TRIPS, amongst implementing other legislation, also extended protection to computer programs and databases. Drahos and Braithwaite (2002) argue that the TRIPS outline was heavily influenced by the United States, which is the principal producer and exporter of creative products on a global scale. The United States, thus, lobbied for strong intellectual property protection as a way to counteract piracy threats of digital products originating from countries such as Russia, India and mainly China. Such developments clearly show the tendency towards the globalization of copyright and intellectual property law.

The 1996 World Intellectual Property Organisation Copyright Treaty (WCT) reaffirmed the basic provisions of TRIPS and started to be more preoccupied with the confinement of copyright exceptions and limitations, like fair use and fair dealings, which had already started with TRIPS. The WCT was clearly driven by a concern to respond to the problems created by the rise of the Internet (MacQueen et al. 2008), and this is the reason why it added rights to deal with distribution and public communication of works, and to support the use of technological measures in the protection from unauthorized use of digital works. The Copyright in the Information Society (InfoSoc) Directive of 2001, which was introduced after the WCT and through strong lobbying, stirred a lot of controversy and heated debates (Hugenholtz 2000). The InfoSoc directive was implemented in the UK in 2003 after extensive amendments of the 1988 CDPA.

## **2.3 Arguments For and Against Additional Restrictions in Copyright Law**

While the stated purpose of Copyright Law is to protect new efforts and encourage creativity by enriching the public domain and allowing creators to draw from the society's common heritage, massive expansion of copyright appears to be the dominant trend. Recent developments in copyright legislation gradually extended the scope of copyright, limited fair use and fair dealing, and it has thus departed from the notion of balancing collective and private interests through extensive copyright regulations that effectively end up stifling creativity (Vaidhyanathan 2001). The period of copyright has gradually been extended, there is no longer the need to renew copyright and the scope of copyrighted material has extended to cover derivative works (Jones and Cameron 2005). Infringement has been criminalized and Technical Protection Measures such as access and copy control technologies, were recognized as a valid method of safeguarding copyrighted works (Kretschmer 2003). Fair use has been significantly diminished and even when it would be legally allowed, technical protection measures add an extra layer of barriers to accessing copyrighted material.

An illustrative example of how copyright is becoming more and more restrictive is the Copyright Term Extension Act (CTEA) of 1998, which retroactively extended copyright terms in the United States by 20 years. CTEA is also known as the "Sonny Bono Act" after the Congressman Sonny Bono<sup>3</sup> who as a song writer and a filmmaker had his own interests in advancing copyright terms; or as the "Mickey Mouse Protection Act" because of the extensive lobbying efforts of Disney in promoting copyright extension, since the first Mickey Mouse cartoon was set to enter the public domain in 2003 (Schwabach 2014). The official reasons for the extension of copyright term for an additional twenty years was according to the Senate Report: 1, the harmonisation of U.S. Copyright Law to the European one; 2, the stimulation of creation of new works through

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<sup>3</sup> Sonny Bono thought that intellectual property should be like tangible property, meaning that it should last forever (see: 144 CONG. REC. H9946, 9952 (1998))

the extended economic incentives and 3, the enhancement of the value of existing works. Such developments, they concluded, would actually enhance the long-term value, vitality and accessibility of the public domain. Both the CTEA and the Digital Millennium Copyright Act (DCMA) have been widely criticized as typical examples of poor law that throttle innovation and progress (Perelman 2002). Nevertheless, this legislation has become the standard for copyright legislation in other countries through bilateral free trade agreements between various countries and the United States.

Proponents of strict copyright regimes base their opinions on the belief that greater protection equals greater incentives to create because of the additional financial rewards and therefore increased and restrictive copyright terms encourage progress in the arts. Martin (2002) argues that intermediaries like publishers and distributors would not invest in untested new works if they could distribute royalty-free existing works. And beyond intermediaries, creators would not actually create anything new and original if they could reuse something that already exists without being restrained by copyright. He further argues that since the public actually continues to pay more or less the same price for a work that has entered the public domain, it is simply in the interest of the authors/creators to extend copyright terms; the intermediaries will continue to profit equally in both outcomes of this situation. Valenti (2001), on a similar strand, points to the importance of copyright for the creative industries: “copyright is the foundation from which spring the creative industries which have dominated the world”<sup>4</sup>. He further likens a public domain work to an orphan, which carries no benefits for the general public (Valenti 1995)<sup>5</sup>. He explains that as no one is responsible for it but everyone exploits it, a public

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<sup>4</sup> The quote was taken from the debate on “Creativity, Commerce and Culture” with Lawrence Lessig and Jack Valenti, in the University of Southern California, Annenberg School for Communication, on the 29<sup>th</sup> of November 2001. The video is available on: <https://cyber.law.harvard.edu/node/94250> (last visited: 15/03/2014).

<sup>5</sup> Copyright Term Extension Act: Hearing on H.R. 989 Before the Subcomm. On Courts and Intellectual Property of the House Comm. On the Judiciary, 104th Cong., 1st Sess. (June 1, 1995) (testimony of Jack Valenti, Motion Picture Association of America), as quoted in Litman, J. (2001) *Digital Copyright*, New York: Prometheus Books, pp. 77

domain work eventually loses all its virtues and no one has an interest in investing in it. He therefore concludes that this kind of situation is obviously not beneficially neither for the public nor for the copyright owners.

On the other hand, scholars who are in favor of a more moderate copyright regime argue that such extensions in copyright terms detriment the public domain, which they characterize as vital as a source of inspiration and innovative activity, while they remain only marginally beneficial to individual creators (Arewa 2007). The main beneficiaries of the extension of the length of copyright term have rather been the big media corporations. Boldrin and Levine (2007) calculate the number of literary copyrights per capita registered in the United States in the last century and they conclude that extending copyright term does not boost creativity, as it has not led to an increase in the output of literary works. The extra years of copyright protection come far in the future during the life of an author; hence their economic value for him is very small. But in the case of a large media company that owns the copyright of some very lucrative character, film or song copyright extension brings vast royalties for many decades.

Various others scholars also explore the consequences that strong copyright regulations have for culture and society on a general level. Lawrence Lessig (2004) after examining the combination of extensive copyright law, digital rights management and technical protection measures, concludes that current copyright law has shifted the balance in favor of the existing intellectual property rights holders, thus reducing the potential for creativity by others and leading to an unprecedented confinement of creativity and of the public domain. The implications of such developments are crucial for society as a whole since information, culture and knowledge are central to human progress both individually and collectively. The media and the creative or content industries as the principle owners of copyrighted works respond to the challenges of new technologies in an extremely defensive way. Niva Elkin Koren (2005) points to the employment of technical protection measures and digital rights

management as well as the extensions of copyright legislation as the obvious results of intense lobbying by the creative industries. She argues that the legislative process has been captured by the content industries, since such small homogeneous groups that have a lot to gain, would persistently pressure for stronger proprietary rights.

On the other hand, advocates of a strong copyright regime doubt the importance of unobstructed access to information in promoting cultural progress within society. What Lessig (2004) calls a “remix culture” is according to Helprin (2009) “digital barbarism” that causes the decline of culture and can lead to intellectual and spiritual destruction. He further argues that intellectual property should be regarded as directly homologous to tangible property and therefore it would be reasonable for copyright terms to last forever. As in previous centuries the majority of the population based their sustenance on the cultivation of the land, it is now intellectual property that has become the primary force of modern economy. Consequently, it is no longer rational to deny intellectual property the exact same status as land ownership has. Keen (2007) argues along very similar lines that our culture had much higher standards in the age of scarcity that it does now, in the age of abundance and amateur content creation. Since, as described in the previous section, technological developments and expansions of intellectual property law come hand in hand, it should come as no surprise that arguments in favour of stricter copyright regimes often echo, if not techno-phobic, then definitely techno-sceptic ideas that represent digital technologies and especially the internet, as having a destructive effect to our society’s institution, economy, culture and morals. Furthermore to regard intellectual property as exactly similar to tangible property implies overlooking its complexities and intricacies, and a failure to deal with the particularities of this abstract concept (Litman 2001). This is not to say that intellectual property should not be protected but that it is much harder to delimit and enforce its protection, therefore needing special consideration and planning.

Copyright and Intellectual Property Law in general, have become highly contested fields where law and policy seek to find answers for the novel challenges posed by new media. The majority of social and legal scholars call into question the idea that strong copyright protection promotes a fair balance between public and private interest or that it leads to increased innovation and creative practice. This is even more the case within an increasingly knowledge based or creative economy<sup>6</sup> where it is new ideas which are the driving force of economic performance (Flew 2005). Such new ideas though do not appear out of a vacuum, but they derive from modifications of other existing ideas and this is the reason why strong copyright regulation may lead to the inhibition of innovation.

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<sup>6</sup> The term “information economy” like “information society” and the closely related concepts of “post-industrial society” and “network society” have been thoroughly analysed and debated by various theorists. For a more close analysis see amongst others: Howkins, J. (2007) *The Creative Economy: How People Make Money From Ideas*, London: Penguin Books; Webster F. & Blom, R. (2004) *The Information Society Reader*, London: Routledge; Healy, K. (2002) “What’s New for Culture in the New Economy?” *Journal of Arts Management, Law and Society* 32, 2: 2167-2195.

## **2.4 The Creative Industries and Copyright**

Howkins (2007) defines the creative industries as the sector of the economy whose products fall under the purview of intellectual property law. There are four main kinds of intellectual property and each has the purpose of protecting a different type of creative product: patents, copyrights, trademarks and designs. Howkins (2007) argues that each of these types of intellectual property law has a large industry associated with it and all of them constitute the creative industries. Copyrighted products like books, films and music constitute a very large sector of national economies. According to Howkins (2007) the creative economy worldwide was worth 2.7 trillion \$ in 2005 which represents 6.1 per cent of the global economy. Caves (2000) also points out to the peculiar characteristics that the economic activity around creative industries has to address. The durability and ease of reproduction of cultural goods, the property rights issues that relate to them, the uncertainty about potential demand, the attachment of the creator to his work and the diversity of skills that are required in order to produce creative works have a drastic impact on their supply, demand and pricing.

Defining the creative industries as the intellectual property industries has the advantage of moving away from potentially ambiguous questions regarding the degree of creativity of different occupations. Healy (2002) argues that although we are accustomed to think of creativity as a characteristic of an artist or the arts in general, it is actually a much broader notion. Creativity encompasses innovation, entrepreneurship and expression since it implies the generation of new ideas and the application or sharing of these ideas in a given field. Science, for example, is an undoubtedly creative activity. What is more, the sciences are part of the creative economy because their products are protected by patent or copyright law.

As Flew (2005) argues, there is an extensive and significant imbalance in market power between content creators, users and re-users on the one hand and the large-scale distributors and publishers on the other. So although the



creative industries discourse draws attention to the recognition of commercial practices as legitimate sites of creativity and the contribution of creative work to the promotion of new ideas and innovation, we should not neglect to also scrutinise the relationship of the creative industries with intellectual property law and the maintenance of balance between private interest and social and economic benefits, which derive from collaboration and sharing. As creative industries modify their organisational form towards a more horizontal, networked model in order to maximise flexibility and reduce fixed costs, they turn to self-employed individuals or small teams to undertake creative work on a project or contract basis (Castells 2001). Such arrangements may entail a higher degree of autonomy but they also require individuals to work long hours and hold multiple jobs within both formal organisations and in more informal, networked groups (McRobbie 2002). It is therefore highly questionable whether the new work patterns in creative industries overturn existing power structures, especially if we also consider the scope for exploitation for those working in creative industries where the number of content creators is immensely larger than the number of content distributors (Flew 2005).

The creative sector is a rapidly growing part of the information economy as the wealth and power of this economy comes from intellectual and creative ideas that are distributed in various forms over information networks. Yet, we observe that there are radically different players within the creative industries. Creators and users' interests and motives are more often than not, radically different than those of the large production, publishing and distribution corporations. Recent modifications to Intellectual Property and Copyright Law create conditions which are tilted in favour of the large scale content or creative industries at the expense of future innovation and the public domain by undermining fair use and extending copyright (Venturelli 2000). The long term effect of such regulations would be the decreasing range of creative innovation, which could potentially play a vital part in the marketplace of ideas. Venturelli (2000) argues that strict copyright regimes lead to an entirely different type of monopoly than that conceived in conventional economics. Anti-trust and

competition law based on legal assumptions that derive in relation to goods under scarcity, are thus ill equipped to handle the monopolisation of ideas and knowledge. As proprietary control over ideas spreads through information networks, the possibility to innovate based on existing concepts decreases. Therefore, the unprecedented access to information, which is enabled by information and communication technology, coexists with an environment of artificial information scarcity. Consequently, one of the most important issues we are faced with today is whether the novel possibilities available for most people to innovate and participate in new cultural forms will actually be realised or not.

## 2.5 Open Content Licensing Systems

Scholars criticising the gradual expansion of copyright law seek to make the point that such an expansion translates to increasing costs for all users of copyrighted material. Under the current regime, if someone wants to legally use work which remains subject to protection, the first step would be to locate the owner of the copyright, a process which is not as straightforward as one might think (Pallas Loren 2007). Copyright is granted automatically upon the fixation of a work without the need for a registration, and copyright's economic part is also transferable. But even if the owner of copyright is actually located, the task of negotiating a license requires an in depth knowledge of complex issues regarding copyright law which in the case of big firms would be handled by their legal department. Consequently, the average user that may want to build upon existing resources taking advantage of the tools that are made available to him by the new, networked, digital technologies, would be in an extremely disadvantageous position against the content industries. What Lessig (2004) called a "remix culture", runs the risk of never actually reaching its full potential, as it is being smothered by extensive copyright law, and the very technological means that facilitated it in the first place. A response to this trend is the development of open content licenses by organizations attempting to incorporate legal aims and discourse as well as social movements' dynamics and widespread social awareness (Liang 2005).

A license is a permission to do something which the granting party or licensor would otherwise had the right to prohibit (Poltorak and Lerner 2004). In other words, the licensor could prevent the actions of the licensee if the license did not exist. In Intellectual property law, the owner of the property allows the licensee to use the licensed rights, subject to certain limitations, which are mentioned in the terms and conditions of the licence. Gifis (2003) points out that a license is a unilateral permission to use somebody else's property and this is what differentiates it from a contract, which is an exchange of obligations and is enforceable under Contract Law, not Copyright Law.

The Free Software Foundation (FSF) was founded by Richard Stallman in 1985 in Massachusetts, USA with the expressed aim of supporting the free software movement in its goals to promote the universal freedom to create, distribute and modify computer software. The GNU General Public License (GNU GPL), the most widely used free software license was subsequently developed by the FSF. Moglen (2007), the Free Software Foundation's attorney, who is primarily responsible for enforcing the GPL, explains that the term "license" has had for hundreds of years, a specific technical meaning in Property Law. The GPL, like Creative Commons, is a copyright license, as it is a unilateral permission, in which no obligations are reciprocally required by the licensor and this is what differentiates them from a contract. The GPL allows users to freely copy, modify and redistribute a programme. But if they do redistribute it, modified or unmodified, the permission extends only to distribution under the terms of this very same license. If they violate the terms of the license all permission is withdrawn.

The Free-Libre Software/ Open Source (FLOSS) movement has a very particular view of the notion of property rights. Weber explains: "Open source is an experiment in social organization for production around a distinctive notion of property... Property in open source is configured fundamentally around the right to distribute, not the right to exclude" (Weber 2004: 16). Richard Stallman chose the term "free software" to connote a freedom of expression and access, rather than a price of zero. He realized that in the development of computer software, the ability to access the source code of a program was fundamental to the development of reliable and useful computer software (Jordan 2008). Stallman viewed the trend in corporate software development of restricting access to the source code as actually unethical. To address this situation, Stallman created the GNU GPL, which grants the right for others to use the software distributed along with the source code but if any derivative works are created, these should also be released under a GPL license. This basic function and logic characterizes all copyleft licenses, as well as the Creative Commons

licenses that apply the “Share-alike” clause, and it is commonly called the principle of reciprocity (Berdou 2006).

### **2.5.1 Introducing the Creative Commons**

Creative Commons is a non-profit organization that was founded in 2001, by legal scholar Lawrence Lessig, in order to address the issues raised by the expansion of copyright law and it is mainly targeted towards the circulation of copyrighted material available through the internet. Its aim is to offer a more flexible framework for authors and artists to both protect and share their work<sup>7</sup>. It substitutes the “all rights reserved” of traditional copyright, with “some rights reserved” where authors can choose which rights they reserve and which ones they waive by selecting one of several Creative Commons licenses. Such a strategy would extend the limits of the public domain, multiplying the resources which are available online while still keeping an appropriate balance with authors’ interests (Lessig 2001). It would also allow individuals to avoid the legal maze rights management and the high negotiation costs it entails, thus facilitating the creative process. Creative Commons aspires to provide a both user-friendly and producer-friendly environment, especially regarding digital resources and online material where such distinctions as users and producers start to be blurred (Toffler 1980; Shirky 2008; Tapscott and Williams 2006).

The whole concept behind the Creative Commons was inspired by the idea and the strategy of the GPL, extending it beyond software to copyrights related to culture and ideas (Jordan 2008). Creative Commons is designed to cover various other types of copyright protected material such as: blogs, websites, educational material, photographs, music and film. It is in these areas that copyright infringement is encountered on a regular basis through everyday practices of new media users and very often without the realization that their actions are infringing on someone else’s copyright (Tehrani, 2007). Copyright law has direct consequences on the daily life of all ICT users and although the general public has become much more aware of the pertinence of copyright issues, the

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<sup>7</sup> <https://wiki.creativecommons.org/History>

common norms of interaction with new technologies violates copyright law on a daily basis: from downloading films and music, failing to reference quotes or posting images on one's blog, to using one's cell phone camera to capture copyrighted works such as public performances, and consequently forwarding the video to friends or posting it on a social networking site. As Tehranian (2007) argues there is a troublesome gap between copyright law and everyday norms which is getting more and more wide in recent years.

Increasingly restrictive copyright law and consequent limitations of fair use have prompted Creative Commons to extend Stallman's defence of digital rights to access, improve and share software to content such as music, books, films, photographs and other creative material. The Creative Commons project also echoes the ideas of the open source software developers when they argue that the case for openness is not only moral, but also practical and economically rewarding (Raymond 1999). Open and collaborative systems encourage innovation, work more efficiently and produce better results than closed, controlled and proprietary systems of development and innovation (Coates and Fitzgerald 2008). Consequently, open systems will stimulate the economy, allowing it to realize its full potential within the digital environment. It is argued that creativity and innovation are best served by information and culture that is as widely available as possible, in order to guarantee that creators and innovators remain free from the control of the past (Lessig 2004). Scholars working in various different fields, from social sciences to legal studies and informatics, advocate for a less restrictive copyright regime and agree that such an approach will serve better both the private interests of the creators and the long term public interests of society. What is more controversial is the precise strategy to be followed in order to achieve such openness as well as its specific characteristics and limitations. Indeed, this thesis aims to contribute in that direction by shifting the focus away from both mainstream industry intermediaries and digital media activists and enthusiasts, towards the practitioners themselves. This research is therefore grounded on the practices of the creators, as they incorporate the CC licenses in their organisational

reconfigurations through their development of innovative business strategies, without neglecting potential problems that they may be facing.

### **2.5.2 Elements and Forms of Creative Commons Licenses**

There are four main elements in the Creative Commons licenses<sup>8</sup>, which can be combined in various ways in order to produce six different licenses. These basic elements are: Firstly, “Attribution”: All of the major Creative Commons licenses require attribution. Attribution became a standard feature of the licenses in 2004 with the launch of the 2.0 version of Creative Commons, sparking extensive online debates on the purpose and desirability of the standardization of attribution. Although attribution may at first glance seem as a straightforward demand, conforming to it can be much more complicated than one might think. The attribution has to be applied in the way the author of the work has specified. In most cases though the authors do not actually specify the exact way they want the attribution to apply. As such, according to the licenses, attribution should include: 1. the name of the author and/or licensor, 2. the title of the work (if supplied) and 3. as far as practical, the URL that is associated with the work, namely a link to the source. The licenses allow the user to give attribution in the way that is most appropriate for the use of the work. So, for example using an work in the online environment would require a search engine friendly link, while a printed use would require a footnote (Bailey, 2010). It is also important that the attribution should not imply any kind of endorsement by the licensor, as this would also be a violation of the terms.

The second element of CC licenses has to do with the commercial use of a work. Some licenses do not allow commercial use. According to the full legal code of a “Non-commercial” CC license, commercial use is defined as a use which is in “any manner... primarily intended for or directed toward commercial advantage or private monetary compensation”<sup>9</sup>. This definition allows for differing

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<sup>8</sup> I will not examine here the lesser known options such as: CC0, CC Sampling Plus, which appeal to very specific communities of users.

<sup>9</sup> <https://creativecommons.org/licenses/by/3.0/legalcode>

interpretations, as there are a lot of grey areas which are not covered, especially when one is dealing with works available online. The ambiguity on whether certain uses fall into the “commercial” category or not, and the consequent confusion surrounding this issue led the Creative Commons organization to commission a study on commercial use<sup>10</sup>. According to the study, the majority of both users and creators agree with the definition of CC in what constitutes commercial use. Also, interestingly users seem to be more likely to regard a use as commercial compared to creators. This means that it is more likely for users to avoid engaging with specific uses of a work for which its creator would have no objections towards.

The third element of the licenses deals with derivative work. The “No-derivative” licenses allow end users to make use only of exact copies of the original, but they are not allowed to create other works based upon that original. Defining the line between a derivative and an original work though, can be a puzzling task. According to the CC no-derivative legal code, a derivative work is defined as “a work based upon the Work or upon the Work and other pre-existing works, such as translation, adaptation, derivative work, arrangement of music... or any other form in which the Work may be recast, transformed, or adapted.”<sup>11</sup> In other words any time a CC licensed work is modified to create another work, whether this is a translation, rewriting or a remix, it is considered a derivative use under the license. However no permission is needed to copy and paste a work in its entirety into for example one’s website, as this is considered a collective work (Bailey 2010). No permission is also needed to modify the work, as far as it is technically necessary to exercise the rights in other media and formats, like for example changing the format of a movie clip in order for it to be compatible with different media players.

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<sup>10</sup> The report entitled “Defining Non Commercial Use” is the culmination of over a year of research by Netpop Research, which included both surveys and focus groups to learn about the general public’s attitudes towards “non-commercial use”. The study can be accessed through this webpage:  
[https://wiki.creativecommons.org/Defining\\_Noncommercial](https://wiki.creativecommons.org/Defining_Noncommercial)

<sup>11</sup> <https://creativecommons.org/licenses/by/3.0/legalcode>



The fourth element that CC licensors can choose is the “Share-alike” option, which allows others to create and release derivative works but only under a similar license. In many ways “share-alike” is similar to the GPL and other copyleft licenses that allow free use of a work as long as new creations are licensed under the same terms. This is the element that prevents derivative works, that were created from CC licensed material to be locked away in proprietary forms, and it only affects derivative uses, not the ones that keep the original completely intact and do not build upon it. Consequently, if a creator is to produce a derivative work from a CC licensed one, compliance with the license comes in two stages: First the original terms of the license such as attribution must be fulfilled and subsequently the derivative work must be licensed under the same terms (Wang 2008).

Depending on which choices creators makes regarding the commercial use, alteration and future reproduction and licensing of their work, these four basic options lead to one of six Creative Commons licenses, which vary in terms of the level of restrictions. While most of the above mentioned features are optional for the copyright owner to choose from, attribution is a general term, which applies to all Creative Commons licenses constituting the minimum level of protection for the copyright owner. There are also a number of other basic rights and restrictions which apply to all Creative Commons licenses and form the core of the Creative Commons project<sup>12</sup>: Licensors are not allowed to use technological protection measures to prevent other licensees lawful uses of the work. They are also required to provide a copy of the license itself or a link to the license in order for others to be informed of the terms under which the work is used. Also as mentioned above, licensees are granted the right to copy, distribute display, digitally perform and make verbatim copies of the work into another format, and they may incorporate the work, unmodified and in its entirety, into collective works. The licenses do not affect other rights such as: moral rights, fair use, first sale and free expression rights (Hietanen 2007). Finally, it should also be noted that CC licenses are negotiable. That means that

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<sup>12</sup> [https://wiki.creativecommons.org/Baseline\\_Rights](https://wiki.creativecommons.org/Baseline_Rights)

as long as one acquires the copyright holder's permission, they can go beyond the terms of the license.

Regarding the form that the licenses take, each license is available in 3 forms: "human readable" or the Commons Deed, "lawyer readable" or the Legal Code and "machine readable" or the Digital Code<sup>13</sup>. The human readable form is the common deed, which describes in a non legal jargon what is permitted and under what conditions. It also displays the relevant Creative Commons icons, which graphically indicate the permitted uses. The lawyer readable format is the full, detailed legal license document, which is always linked to the common deed. Finally, one of the most interesting features of Creative Commons licenses is the third format in which they are available, namely: the machine-readable format. This is a small segment of code that the copyright owner can cut and paste into web pages. This has two functions: it displays the Creative Commons logo and the icons related to the given license, and it also contains metadata which can be used by search engines in order to locate material made available under Creative Commons by directly associating the given creative work with their particular license status, in a machine readable way.

### **2.5.3 Reasons for Creative Commons Licenses' Adoption**

Needless to say that works which are published under a Creative Commons license are not completely free, in the sense that they do not belong to the public domain<sup>14</sup>. Actually the Creative Commons strategy is entirely based upon the exact same bundle of exclusive proprietary rights that form copyright and drives its legal force from their existence (Elkin-Koren 2005; Dussolier 2006). What is different in this case is the assumption that even if the proprietary regime does not change, the common practices of information production and dissemination can and do change. In other words, the rights would remain the same, but users of the licenses would change the way they

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<sup>13</sup> <https://creativecommons.org/licenses/>

<sup>14</sup> This is not the case for CC0 where the copyright holder waives all copyrights and related or neighboring rights such as: moral rights, publicity or privacy rights etc.

exercise them. This assumption presumably comes from observing actual practices in the digital realm (Carroll 2007). In the new information economy, sharing, participation and collaborative production have led to a shift in attitudes for some creators who choose to waive some of the exclusive rights granted to them automatically by copyright law (Pallas Loren 2007). Such an attitude is not a corollary of strictly romantic or altruistic motives. As Pallas Loren also points out:

“... those reasons can be altruistic - wanting to see the commons grow; reactionary - wanting to prove Congress is wrong in granting copyright owners rights that are overly broad; guilt based - feeling that one should contribute to a “commons” for the public good; or calculating - an author may perceive greater attention, and, ultimately great profits if he uses Creative Commons tools for his works.” (Pallas Loren 2007: 276)

Essentially, the ideology behind the Creative Commons project can be summarized as relying on four basic assumptions: 1. Creativity relies on access and use of pre-existing works, 2. copyright law stands as a barrier to the access and use of existing resources, 3. the high costs that the copyright regime entails affects especially individuals by prohibiting the access and reuse of creative material, concluding that 4. copyright could be practiced in an alternative way which would promote sharing and re-use (Elkin-Koren, 2005).

Benkler's (2006) arguments on the shift towards networked information economies have many similarities with the CC principles and reach similar conclusions. He notes how the most advanced economies are increasingly centered on information and cultural production. When this fact is combined with our networked ICT environment and the decreasing costs of processors with high computation capabilities, which are also interconnected through the internet, we can witness how the role of non-market production has increased especially in the information and cultural sector. This type of production Benkler (2006) argues, is organized in a more egalitarian and decentralized ways but it also has to confront existing and entrenched interests, which

continuously try to stifle them. In the new networked economy, as Benkler (2006) defines it, long established industries such as the recording and film industry are likely to try and hold back innovations that threaten their existing institutional structures. The importance of opposing such entrenched actors leads to many similar positions between Benkler and Lessig, particularly regarding the importance of extending the FLOSS principles to a wide range of creative content.

## **2.6 Use of Creative Commons Licenses in Online Communities**

Online communities dealing with user-generated content proliferated after the widespread diffusion of the internet since the mid-1990s. Such communities can be used as an alternative form of communication between social or professional groups. Alternatively they could even be the primary mode of interaction for communities of interest, especially when these particular interests are associated or facilitated by web 2.0 technologies. Rheingold (1994) argues that virtual communities form when people participate in public discussions of a sufficient length and with sufficient emotional involvement, having as a result the forming of webs of personal relationships. The sociotechnical nature of such communities is apparent by the way they have integrated the use of Web 2.0 technologies at the core of their interaction. Since their purpose is based upon social interaction and exchange of information and resources between users online, knowing exactly what material is available to them and under which conditions becomes crucial in order to support this reciprocity between their members (Carroll 2007). Therefore, the expressed legal status of online resources plays a fundamental role in the development and functioning of online communities based on user generated content.

Suzor and Fitzgerald (2007) conducted a study of online communities using open content licences, such as Flickr-r (using Creative Commons), Wikipedia (using GFDL), ccMixter (using Creative Commons) and Second Life. These communities rely on the exchange of content, which is the typical subject of copyright, namely: pictures, texts, music and films. Consequently, getting around the issues raised by the use of copyright protected material and facilitating the smooth exchange of such resources is a central issue for the very existence of these online communities. For this reason, each community develops a set of norms that may not be expressed explicitly but nevertheless apply widely and determine the mode of interaction between the members of that community. As Suzor and Fitzgerald (2007) point out, these norms are the community's way of addressing questions of re-use, redistribution outside the

community, manner and style (e.g. of how to credit others whose works one uses), interoperability (what types of licenses can be combined together), and whether it is necessary in some occasions to ask for permission to use copyrighted material. After researching these online communities, Suzor and Fitzgerald (2007) conclude that open content licenses actually form the cornerstone of communities based on user-generated content. Their non-discriminatory nature, transparency of terms and automated and generic operation, make them not only a convenient, but a necessary tool for community building.

On a related strand, we should keep in mind that online communities are also underpinned by the technological platforms which they are using and the providers of such platforms, who act as intermediaries, will often seek to gain revenue through various means such as advertising or subscription fees (Fitzgerald 2008). An increasing number of companies are embracing “open content” organizational forms and experimenting with different types of business models in the anticipation that if they manage to capture enough attention, they will be able to turn this into revenue. Commercial platform operators such as Google (Youtube), or eBay and Yahoo (Flickr, Skype, del.icio.us) are amongst the biggest and most powerful corporations worldwide and they do make a great deal of profit through online communities. These profits are not always shared between these intermediaries and the community members that are the content providers, except in rare cases like Revver<sup>15</sup>. Such intermingling of collaborative content production and mainstream commercial activity presents an additional challenge to conventional notions of copyright.

Focusing more specifically on Creative Commons Licenses the largest group of adopters are bloggers, video artists and photographers, which can be grouped collectively as the producers of user generated content. Carroll (2006) takes

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<sup>15</sup> Revver is a video sharing website which hosts user-generated videos and gains revenues by attaching advertisements to these videos. The profits are subsequent shared 50/50 with the creators. <http://www.revver.com/>

Flickr as an example of Creative Commons popularity. He points out how on June 2005, there were more than 2 millions of photos released under a Creative Commons license on Flickr; while one year later this number had gone up to 12 millions. Creative Commons popularity is even more pronounced in a different area: namely the blogosphere. Technorati, an online weblog search engine, describes the blogosphere as a conversation in which millions of people express their ideas and millions respond to them<sup>16</sup>. Such online environments are overwhelmingly supportive in developing each member's capabilities and skills through intense interaction (Molphy, Pocknee and Young 2007). This dialogue, in the form of responding to other members' activities, citing or linking to them, is greatly facilitated by the adoption of Creative Commons licenses which allow to build a conversation between blogs, bloggers and social networks, without the fear of legal consequences.

All this buzz and creative activity on the internet by amateur or semi-professional users has led many commentators to question the thin line that separates users from consumers, and producers from creators in the digital realm (Toffler 1980; Shirky 2008; Tapscott and Williams 2006; Leadbeater 2008; Howe 2009). Carroll argues:

"Labelling these creators "users" is in my view a misrepresentation because they are creators in their own right. I prefer to think of this group as "because-I-can" authors for whom copyright law's one size definitely does not fit. Ask these creators why they use digital technologies to create and to share their work, and most will not respond that it is "for the money," or "for fame," but "because I can." (Carroll 2007: 454)."

Nevertheless, Carroll (2007) argues that what these users/creators can indeed do is limited not by their capabilities or lack of technical means, but by copyright law. The only alternative solution that Carroll (2007) sees to the increasing costs of communication for re-use of copyrighted material, comes in the form of adopting alternative open content licenses, such as the Creative Commons. By adopting such licenses, users know outright how they can engage

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<sup>16</sup> Technorati: <http://www.technorati.com/about>

with a given material or how they would allow others to interact with their own creations. Therefore, it is argued that open content licenses facilitate interaction within a community and this is why they can be so integrated in its functions that the adoption of such a license becomes one of the core rules of the community.

Although the largest percentage of CC adopters are non commercial content creators, we can increasingly witness how CC are being used to construct new business models for the distribution of creative works from professional content creators. CC licenses, in such occasions, are acting both as intermediaries themselves, enabling the coordination and regulation of smooth end-to-end transactions; but they also enable the surfacing and growth of new intermediaries which rely on the availability of CC licensed material, such as archives, libraries, publishers, distributors and other specialised web-based services. Carroll (2006) describes such processes as indicative of the disintermediating and reintermediating roles that CC licenses play on the internet.

Such business models are being developed either by the creators themselves employing strategies such as crowdsourcing<sup>17</sup> (Howe 2009) and voluntary compensation models (Belsky et al. 2010); or by new intermediaries which, as mentioned above, are the ones providing the technological platform which enables individual authors to collaborate, create and distribute their work. An example of such a new type of intermediary using CC licenses is Magnatune, an online record label which according to its founder, John Buckman, was created as a response to the inherent problems and deficiencies of traditional recording industry and contracts<sup>18</sup>. Magnatune, like previously mentioned Revver, splits the revenues between themselves and the artists on a 50/50 basis, which is a significantly larger percentage compared to the one granted by a traditional major label

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<sup>17</sup> "Crowdsourcing" is a neologism deriving from "crowd" and "outsourcing" where a business goal such as the funding of a project is achieved by a large group of people or a community by leveraging the mass collaboration capabilities enabled by digital technologies.

<sup>18</sup> <http://magnatune.com/info/why>



distributor<sup>19</sup>. Such alternative business strategies form the basis of Butt's and Bruns' (2005) arguments on the growing divergence between two different types of music ecologies: that of the major industry distributors and a second looser network of independent artists, producers, distributors, markets and audiences. Their argument could be extended to all major content industries such as publishing and filmmaking. They argue that the major players in a given creative industry dominate the legal and policy landscape, and present their interests as synonymous with the industry as a whole, including individual creators and consumers. In contrast, it is rather the second type of creative ecology where most dynamism, enthusiasm and originality are to be found, leading to innovative models of production, marketing and distribution.

### **2.6.1 The Open Content Filmmaking Community**

"Digital video strikes me as a new platform wrapped in the language and mythology of an old platform. Lamb dressed as mutton, somewhat in the way we think of our cellular systems as adjuncts of copper-wire telephony. The way we still "dial" on touchpads. We call movies "film", but the celluloid's drying up". (Gibson 1999)<sup>20</sup>

Since its birth in the 1890s, cinema has been characterised and evolved through an ongoing dialogue and constant interaction between technology and art. The filmmaking industry has developed rapidly within these 125 years, in terms of technological, economic and social factors. The most current developments were enabled by ICTs and more particularly the Web which led to what is called Open Content Filmmaking and the related concepts of participative, peer-produced cinema and web cinema (Cassarino and Geuna 2007). Collaborative production is facilitated by the internet, as it makes it technologically possible to interact and organise more loosely, even when very large quantities of data involving images and sound are shared. Cassarino and Geuna (2007) argue that such changes in the production and distribution of films have consequences that go beyond the strictly cultural realm. Films constitute powerful instruments, which are used to generate

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<sup>19</sup> <http://magnatune.com/info/musicians>

<sup>20</sup> [http://archive.wired.com/wired/archive/7.10/gibson\\_pr.html](http://archive.wired.com/wired/archive/7.10/gibson_pr.html)

and spread ideas. Therefore, a paradigm shift in their production and distribution could consequently affect freedom in different levels of our society.

CC is a licensing scheme that can be applied to various types of creative content. Music, photography, film and literature are some of the most prominent areas where it is encountered. Amongst them, filmmaking presents a special case as it requires the most diverse expertise, such as screenwriting, design, cinematography, editing, music, direction and acting. But it also provides a great opportunity to nurture relationships between different creative communities. Filmmaking had always been a collaborative process (Hodge 2009), but with the introduction of digital technologies and open source methodologies we can further witness the involvement and collaboration between diverse communities of creators and audiences. Open content filmmakers (OCFs), leverage off the affordances of social media and build large online communities, before the official launch of the film, which assist them in production, distribution and marketing.

What is also extremely important is that open content film projects allow ideas such as open source and user generated content to be more accessible to a wider audience (Grassmuck 2011). They can thus be regarded as a bridge between traditional content and bottom up user-generated content. What is more, filmmaking still entails a high financial risk compared to other types of digital content and that presents an additional challenge in coming up with a viable alternative business model. But as the open source methodologies are increasingly applied to business strategies and art projects, more niche communities of special interest form to support and contribute to these projects. Such projects employ open source methodologies to varying degrees and in different stages of the project's development: from production to marketing and distribution. Many of them use a combination of online and offline approaches by screening their films and the user edited versions of them on a big screen. These collaborative forms of production are made possible and are becoming increasingly widespread through the use of digital video technology, open source film production software and flexible licensing systems like CC.

There are three broad phases involved in filmmaking: Production, Distribution and Exhibition (Abrams et al. 2001). The use of CC licenses has a direct impact on distribution and exhibition, as the purpose of the CC project is to actually allow digital redistribution, even in the most restrictive type of license. Film production is subdivided into four further stages: Finance, Preproduction, Production and Postproduction. The use of open source methodologies could influence directly or indirectly all phases of filmmaking. When it comes to independent film production, financial investment is not guaranteed as opposed to major studio productions. Independent filmmakers have the option to secure capital from various sources such as: the government, television companies and foreign and private investment. CC film projects adopt various strategies to securing capital, such as through government funding and crowd-funding, or even self-funding. Other ways for open content filmmakers to generate revenues after the distribution of their films are through voluntary donations or by selling related merchandise (Belsky et al. 2010). Finally, depending on the type of the CC license chosen and whether it allows for derivative works, film and sound editing are the other two processes that change drastically through the application of CC licenses in films.

Hanson (2003) suggests alternatively, that the largest impact of open source cinema is likely to be related, not to the film production per se, but to the ways audiences engage with films. Instead of sitting passively and simply consuming creative works, people will be able to play around with films, get actively involved in the creative process and will thus prefer the open source version of cinema. This, he concludes, could lead to putting under substantial market pressure the big production studios, which would consequently opt for releasing a film theatrically and later releasing it as an open source film, which people can interact with. Proponents of open source cinema thus believe that it could force Hollywood to give audiences more control over the kind of films they want to see (Cassarino and Geuna 2007).

## **2.7 Critical Approaches to the Creative Commons Project**

Besides the apparent popularity of the Creative Commons licenses, there are also more sceptical approaches that come from various positions. Some analysts like Berry and Moss (2005) take a normative approach comparing the notion of an idealized “commons”, freedom of information and culture, with the way these concepts are being applied to the Creative Commons project. Since definitions of what exactly constitutes a “commons” vary, Berry and Moss (2005) emphasize the ethical implications of the commons and conclude that strictly legal approaches fail to capture the true essence of what is expected when participating in a commons. Their view is that Creative Commons regards culture in a very limited way, so instead of a real commonality there are only private interests and a dispersed collection of works that depend only on individual choice for the way they are reproduced and redistributed.

Elkin Koren (2007) is concerned with the nature of the Creative Commons project as a form of political activism or social movement, which like the Open Source Movement, seeks to bring about social change. While she shares the basic concerns of extensive copyright, she questions how effective the legal strategy of Creative Commons will be in the creation, dissemination and re-use of creative works. The Open Source Movement was addressing the needs of a small and homogeneous group of professionals, while Creative Commons addresses the general public as a whole. But as the general public comprises of different groups with various goals and strategies that could even be conflicting, Creative Commons appears to be lacking in ideological clarity. With no defined core principles in its ideology, besides the assertion of promoting availability of creative works, Creative Commons seems to accept a libertarian tradition which promotes self regulation and individual choice. But the multiplicity of Creative Commons licenses and the lack of a clear alternative to the proprietary regime could actually strengthen the whole intellectual property discourse having therefore the opposite results than was originally intended. Elkin Koren (2007) suggests that Creative Commons should trade a portion of the wide range of

choices that they provide through their licenses, in favor of standardization by creating a single type of license with predefined conditions. She argues that this would cut down the transaction costs in re-use negotiations even more, in favor of greater uptake of the licenses.

Cramer (2006) also points to the proliferation of licenses that Creative Commons contributes to. He claims that Creative Commons lack consistency since there is no minimum, common set of rights or obligations underlying the different Creative Commons licenses. He finds the whole project fragmented, and unlike the Open Source Movement, as following a principle of reserving rights for owners rather than granting them to the general public. Nimus (2006) also agrees with this approach claiming that the exclusive proprietary rights Creative Commons is based on, reinforce the power of the copyright owners and make the distinction between users and producers even sharper. Nimus (2006) and Cramer (2006) both believe that the restrictions Creative Commons licenses pose to the re-use and re-distribution of creative content, contribute to the narrowing down of the public domain instead of its expansion.

Pasquinelli (2008) is wary of two suggestions made by Lessig (2004), in order to promote not only the creative commons project but the whole open culture concept. Lessig (2004) proposes an alternative compensation system that would reward creators for their efforts. He suggests that all content that can be transmitted digitally should be marked with a digital watermark so that the number of items that are actually distributed would be monitored and artists could be compensated by an appropriate tax. Pasquinelli (2008) is not convinced that a new tax is the right answer for the challenges of the new networked economy, especially when he considers the scale of centralized intervention that a system for tracking internet downloads implies. His second point comes from another of Lessig's arguments: Lessig (2004) asserts that the market needs a dynamic and self generating space in order to expand and create profit. He then appears to be willing to sacrifice a portion of intellectual property in order to gain a larger and more robust internet. He mentions that a

system which is less secure may allow more unauthorized sharing, but it will also create a bigger market for authorized sharing. He claims that the balance that he is trying to achieve is to ensure artists' compensation without breaking the internet. Pasquinelli notes how in this approach Creative Commons are used in order to expand and facilitate the space of market and to assist neo-liberal capitalism.

Different critiques echo the different ideological priorities and practical considerations of each analyst. However, Creative Commons does not claim to be the only and ideal model for governing intellectual property or stimulating innovation. It is simply one model amongst many that considers feasible solutions to the restrictions of extensive copyright regime that has been developed in the recent years. Under the given circumstances of the new information economy, Creative Commons stated goals are to simply attempt to shift back the balance between conflicting interests in order to avoid limiting user innovation. It is under this light that Creative Commons project needs to be evaluated in order to measure its contribution to accomplishing its stated goals, and also assess whether there is scope for improvement and change in its strategy.

## **2.8 Closing Remarks**

Beyond the heated debates on the appropriate scope of copyright law or the suitability of Creative Commons licenses for cultural creation, open content creators' motivations and actual practices are yet to be fully understood. This research seeks to engage exactly with such diverse and highly mediated processes of organisational reconfigurations, as those put in place by open content filmmakers, as well as investigating their innovative capabilities and the role that the Creative Commons licenses' adoption play within them. In order to effectively capture such dynamic processes throughout the diverse spaces and time frames where they unfold, we need to go beyond linear explanations and static descriptions and adopt reflexive and qualitative research methodologies. In the next chapter I will present the theoretical and methodological perspectives that have guided this research, and I will argue in favor of the adoption of Science and Technology Studies (STS) approaches for the study of such fast-paced, technological and legal innovations which take place between diverse actors and across multiple cultural and organisational settings.

## **Chapter 3**

### **Theoretical Framework, Methodology and Research Design**

#### **3.1 Introduction**

This chapter is divided into two parts. In the first part I discuss my conceptual and theoretical framework and how I have used Science and Technology Studies literature as the guide to this doctoral research. While in the second part I explain in detail my chosen methodology and research design. In section 3.2 I review the different approaches to the analysis of technology and society within the field of Science and Technology Studies. After explaining some of the strengths and perceived weaknesses of the Social Construction of Technology and the Actor Network Theory perspectives, I conclude that the most appropriate framework for this research lies within the Social Shaping of Technology approach. In section 3.3 I focus more on the Social Shaping of Technology approach and more specifically on its extension through the Social Learning of Technological Innovation. Social Learning allows for complex and dispersed practices surrounding the appropriation of innovations to be dynamically captured even if they involve multiple, different actors, or as they expand through diverse online or offline spaces and at different points in time. The Social Learning framework is therefore deemed as the most appropriate approach for this doctoral project as it allows for complex processes of technological and legal innovation to be captured effectively despite them being dispersed through different spaces and involving diverse actors.



The second part of this chapter focuses on my chosen methodology and research design. Section 3.4 underlines the importance of socio-legal research in the study of legal phenomena and how sociological insights can enrich legal scholarship. Qualitative methodologies are especially illuminating as they reveal different layers of meanings, interpretations and processes that were not accessible through traditional legal studies or quantitative socio-legal research. Given the increased relevance of copyright law to the activities of a wide range of actors, approaching issues related to it through reflexive methodologies is regarded as highly essential as we shall see in section 3.4.1. Section 3.5 explains the motivation behind this project and provides a general framing of my doctoral research, before we proceed to section 3.6 where I present the precise research questions and objectives. In section 3.7 I frame my research strategy and in section 3.8 I argue for the suitability of multi-sited ethnography as the most appropriate methodology to guide this research. I further explain how I selected my research sample (3.8.1) and gained access to participants (3.8.2). Section 3.8.3 details the research methods I used for data collection, namely: semi-structured interviews, documentary review and unstructured observation. Finally the chapter concludes with some reflections on the limitations of my chosen methodology.

## **A. Conceptual and Theoretical Framework - Science and Technology Studies Literature as a Guide to Research**

### **3.2 Early STS approaches to the analysis of society and technology**

The various approaches for analysing technology within the broad field of constructivism share the common goal of countering the assumptions of technological determinism. Through technological determinism, technology is seen as an autonomous agent of change, treated as if it had inherent capabilities, which cause things to happen independently and in a unidirectional manner. Under these assumptions, new information and communication technologies are predicted to directly bring about fundamental changes in society, changes to which society can only react, but which it cannot effectively alter (Grint and Woolgar 1997). As Thomas P. Hughes (1994: p.102) notes, technological determinism refers to "... the belief that technical forces determine social and cultural changes." On the other hand, social constructivists argue that technology does not just appear from a vacuum or from some disinterested front of innovation. Instead, it is born out of the strategies of particular individuals and groups within the social, legal, economic and technical relations that are already in place within a given society (Bijker and Law 1992). This is supported by evidence that the same technologies have produced varying outcomes when situated and used in different contexts. Consequently, opposing the doctrine that a society's technology determines its cultural values, social structure, or history; all constructivist frameworks of analysis maintain that both the path of innovation and the consequences of technology for humans are strongly shaped by society itself, through the influence of culture, law or economy. This process though is rather interactive, meaning that social developments both shape and are being shaped by technology (Hughes 1994).

One of the main directions in the social studies of technology is to construct and refine theories that aim to understand the complexities of the interactions between society and technology. There are thus broadly three major

theoretical approaches in science and technology studies for the analysis of the relationship between technology and society. The Social Construction of Technology (SCOT) (Pinch and Bijker 1984) and Actor Network Theory (ANT) (Latour 1987) are the two early constructivist strands that seek to reject deterministic accounts of technology in favour of social action (Russell and Williams 2002). The third one is the Social Shaping of Technology (SST) (MacKenzie and Wajcman 1985). The two earlier approaches besides their role in breaking the pattern of technological determinism, have contributed many useful ideas, which were taken up in later analysis and research. So we find deeply integrated and further elaborated in SST analysis notions such as the “heterogeneous network” (Law 1987), which is employed in order to describe the multifaceted intertwining of knowledge, skills and choices which are involved in designing and developing new technologies; or the term “sociotechnical” (Hughes 1986) used in order to convey that technology is never just technical or just social, but instead there is intense interactivity, or a “seamless web” connecting these two spheres.

A short review of these approaches, which aim to understand the relationship between technology and society, is important for the purposes of this thesis as they provide the conceptual tools, theoretical framework and explanatory power for answering my research questions. Technology is socially constructed, designed, built and implemented by us and it involves a set of decisions about how said technology ought to work, as well as the construction of knowledge and organisational arrangements surrounding its implementation (Pickerill 2003). Nevertheless, the extent and ways through which technology influences society and the interpretation and understanding of this relationship is actually highly contested (Winner 1993). Therefore, the different theoretical approaches mentioned above construct different sorts of knowledge depending on their operationalisation of the relevant concepts.

The SCOT framework emerged as an expression of criticism on the overly simplistic and linear models of innovation and technology employed by

contemporary studies of technology (Pinch and Bijker 1984). SCOT methodology, employs the principle of symmetry as a legacy from David Bloor's Strong Programme in the Sociology of Scientific Knowledge (1991 [1976]), in order to argue against attributing the success of a technology to its, imputedly superior, technical features. It aims to reveal the shortcomings of linear models of innovation that take for granted the success of a given technology, while analysing it retroactively and without taking into consideration the struggles, conflicts and possible failures before the technology manages to stabilise and reach a closure. In the SCOT approach, relevant social groups and structures that contribute to the shaping of a technology are identified and acknowledged, although their description remains rather static and for this reason, while offering valuable insights, the SCOT approach is criticised as inadequate (Russell 1986). Relevant social groups are illustrated as clear-cut entities, isolated from each other and equal in power, which presents a somewhat misleading picture (Pinch and Bijker 1984). Therefore, if we seek to understand the complex interdependency of both the social and the technological elements, relevant groups and interests must be analysed within a structural and historical context; and we should examine their relations not only to technology but also to other sections of society, taking into account the broader historical, economic, political and ideological background (Russell 1986).

Actor-network theory (ANT) evolved from the work of Bruno Latour, Michel Callon and John Law in the early 1980s. As Bijker (1995) notes, ANT seeks to describe sociotechnical ensembles through the construction of heterogeneous networks of human and non-human actors, by following a principle of generalised symmetry that analyses the human and non-human world using the same conceptual framework. Since the networks that are to be described consist of humans and non-humans such as animals, objects and ideas, the question becomes how material-semiotic networks (Bijker 1995) come together to act as an apparently coherent whole. The concept of translation is found at the basis of the actor-network approach. It refers to the conscious efforts of the central actors, otherwise called system-builders or heterogeneous engineers (Russell

and Williams 2002) to transform the identities and interests of other actors, machines or institutions in order to bring them to different positions or to translate their meaning for the purpose of network building.

ANT methodology is based on two basic principles: One is to follow the central actors, through interviews and ethnographic research, as they attempt to collect the necessary resources for their project, particularly by enrolling other actors (Russell and Williams 2002). The second is to examine inscriptions, such as texts, images or databases. Latour and Woolgar (1979) argue that inscriptions are amongst the major products of scientific work since they make possible action at a distance by stabilizing work in such a way that it can travel across space and time and be consequently combined with other work. Texts are also central to the process of gaining credibility as they attempt to present work in such a way that its meaning and significance are irrefutable.

ANT has contributed many useful ideas to later analysis and research of technology. Besides from being amongst the pioneering approaches that challenged the widely held notion of technological determinism, many of its methodological foundations have proven to be quite useful and remarkably adaptable to different contexts and theories. Nevertheless, it also suffers from major weaknesses and inadequacies. The main criticisms towards ANT revolve around the location of the research and its treatment of social structure and power. The preferred location for technology research within the ANT approach is inside the innovation and design laboratories where facts and artefacts begin their lives. But by following the actors and focusing on these stages without expanding the analysis to the enrolment of other groups such as consumers and end-users, important stages of the innovation process become invisible. As a result, concepts like social structure should be taken into account as background determinants of action. ANT methodology is founded on the avoidance of any preconceptions about social structure, situated interests or power relations. No statement can be assumed to be relevant at the outset of an empirical investigation, unless it proves to be so during the analysis.

Cockburn (1993) argues that this is a basic problem related to ANT analysis, its radical agnosticism with regard to society or social context. Structures do exist within all fields of society prior to ANT analysis and they are the outcome of distinct historical processes.

The principle weaknesses of these two approaches are located in the deficient handling of the relevant social context in the analysis of technological systems. SCOT acknowledges the existence of relevant social groups and interests in the analysis of technology but it does not capture the dynamic interplay within different groups of the society and also the two-way interaction of social context and technology. ANT, on the other hand, did not acknowledge any a priori social structure, groups or interests, unless this would turn up during the analysis. Such treatment of relevant social groups and structures run the risk of ignoring important parts of technological development and innovation. Innovation does not begin and end within a lab. Technological capabilities become appropriated and reinterpreted by their users, and the application they put them under is not always the one that was foreseen by the designers and developers (Feenberg 1999). Thus social constructivist approaches ought to examine the micro-level social processes that shape technology and innovation. Analyses should seek to explore the complexities of the two-way relationship between technology and the user.

Especially when examining various socio-technical processes related to Information and Communication Technologies, we need to incorporate technological, social, political, legal and economic factors. The analysis should go beyond the artefacts or devices used to communicate or share information to include the actors involved; their activities and practices; as well as the social arrangements or organisational forms that develop around these devices and practices (Lievrouw and Livingstone 2006). Naturally, the analysis of all technologies should include artefacts, practices and social arrangements, but what differentiates new media from old media is the increasing degree of complexity in the interaction between these three levels of analysis. Old media

are somehow more “passive” as they involve a somewhat more linear relationship between the sender of a message, the message itself and the receiver (Jenkins 2006). When it comes to new media we cannot assume such a linear relationship or, as a matter of fact, we should not make any a priori assumptions regarding the relevant set of relationships at all, and this is why a Social Shaping of Technology perspective will be appropriate as a guide in exploring the dynamic links between artefacts, actors, practices, and social and institutional arrangements. The social relations that construct the use of technology can be studied via in depth empirical examinations of the ways in which new, networked digital technologies are viewed, used and shaped by different groups of individuals and organisations. More specifically, questions of agency, of why and how people use technology, how governments regulate its use and how corporations try to generate profit from them, should be addressed in order to understand the intricacies that are entailed in the interaction of law, society and technology.

Furthermore, the way in which new media are shaped is liable to have a significant influence upon the way in which it can be used and controlled (Pickerill 2003). Using an alternative interpretation of code to that of Melucci (1996) who explored the dominant code of society, Lessig (1999) has explored how the architecture of computer mediated communication (CMC) is rooted in code, in examining how CMC is structured and consequently is controllable. Thus Lessig argues that governments and business interests could easily legislate and regulate digital media by controlling the code in which they are written. Until recently, with the emphasis upon simplistic either utopian or dystopian analysis, the implications and complexities of this situation have been largely ignored. However, different user groups and communities of practice are beginning to move beyond simply thinking of the technology as a tool to be used with hardware they could own, to taking control of the technology’s code as well (Pickerill 2003). The proliferation of open source software, open content licenses and the online communities that are built around them, challenge

governments' and corporations' abilities and efforts to regulate new digital media (Castells 2001).



### **3.3 Social Shaping of Technology – Social Learning in Technological Innovation**

The Social Shaping of Technology perspective is less prescriptive and stringent in analytical precepts compared to the two approaches mentioned above. It allows for more flexibility and reflexivity from the part of the researcher and encompasses a broader set of methods that can be employed in the research (MacKenzie and Wajcman 1999). It can also be used as a focusing strategy to avoid simplistic and linear explanations for innovation processes and how they impact on society. Like the theories mentioned before, SST also challenges deterministic accounts of technology and innovation and how they impact on society by showing how society itself is also actively shaping technology. This approach certainly does not negate that technology can bring about social change or that technological innovation is at least partly shaped by technology itself (MacKenzie and Wajcman 1999). But it does still place emphasis on the indeterminacy of the direction of influence between technological innovation and social processes. The Social Learning in Technological Innovation framework emerges from the SST perspective. Sørensen (1996) explains how conceptualising technological change as Social Learning offers a different strategy to the analysis of how technological impacts are made, especially in the context of new media with their increased levels of interactivity. Pollock and Williams (2009: 134) state:

“Social Learning has been proposed as an extension to the Social Shaping of Technology perspective but one that takes into account the complex and dispersed processes of learning and struggling as new technological capabilities are adapted to and incorporated within the detailed fabric of social life (Sørensen 1996). Social learning highlights the extended range of actors and locales in which innovation takes place (Williams et al. 2005; Russell and Williams 2002).”

Within the broad perspective of the Social Shaping of Technology approach, its extension in the Social Learning in Technological Innovation framework is therefore deemed as the best option for this research project, as its flexibility and broadness allow different theories and concepts to be creatively and

fruitfully blended together, in order to provide rich accounts of innovative processes taking place in different localities and time frames, through the use of digital technology tools.

Besides the shift of technology and innovation research away from a deterministic model which focuses on the “impact” of technology on society, there has also been an equally significant change on how the users or audiences of technological systems and artefacts are perceived. Instead of them being passive consumers they are regarded as active agents and as important actors in the innovation processes as the designers or innovators themselves. In no other field is user involvement more apparent than in the innovative processes taking place through digital media. The interactivity enabled through them challenges clear-cut definitions of innovators and users and calls for a re-conceptualisation of design, adoption and diffusion.

Such practices entail intricate and multilevel processes of social learning, which have to be carefully explored in order to understand the dynamics of sociotechnical development of these systems. As we can no longer settle for comfortable and simplistic explanations of mere “impact”, we need to trace the interactions between actors, institutions and legal and technological infrastructure in order to fully grasp technological, societal and legal changes. In this attempt, regarding technological and legal innovation as a set of social learning processes, provides us with the appropriate tools and concepts to thoroughly analyse such sociotechnical re-arrangements.

The Social Learning framework aims to enhance SST by incorporating ideas from cultural studies, organisational studies and related evolutionary models of technological development (Williams et al. 2005). Evolutionary economics and economic history has used the concept of Social Learning to explain processes of “learning by doing”, “learning by using” and “learning by interacting” within a knowledge economy (Lundvall and Johnson 1994). Although this approach does offer some important insights, it remains rather limited in its close focus in technological systems and it does not elaborate further on the very nature of

“learning”, the micro-level mechanisms that underpin it and how it is a concept charged with controversy, power struggles and conflict over diverse interests (von Hippel and Tyre 1995).

If we want to understand the actual processes involved in social learning, and therefore overcome the limitations that the above described approach poses, we need to emphasise and elaborate on the ways technology becomes domesticated and embedded within specific social settings, without neglecting the negotiation processes and potential conflicts that they may entail. Williams et al. (2005) explore how social learning in technological innovation takes place by mapping out these precise interactions between developers and users when placed in different contexts. Here the idea and processes of domestication is central (Lie and Sørensen 1996; Silverstone et al. 1992). The concept of domestication refers to all the efforts that users of a certain technology have to make, in order to adjust and fit the specific technology in their every day practices and general environment, as well as the meanings and understandings that they apply to it. Contrary to studies that focus simply on the design and development stages of technology, the social learning approach and the concept of domestication advocate for a broader conceptualisation of technological innovation, which would encompass a larger variety of locales and players such as intermediate and final users of technology. Different user groups are not simply passive recipients of finished and closed products, but contributing actors to the innovation process through their appropriation and domestication of technology. Domestication of technology is therefore not seen as disconnected from technology design but as an integral and active part of it. Consequently, the Social Learning approach advances research strategies which stress not simply on the different spatial settings of a technological innovation but also take into consideration its temporal aspect as well, by examining the complete life cycle of a product and accounting for all the different and multiple phases of design, implementation, consumption and use (Sørensen 1996). By doing so, they are locating technology within the broader historical context and therefore

providing a “biography” of technology development over a sufficiently wide time frame, in order to demonstrate the influence of the user-developer relationship.

Concepts such as domestication, innofusion, user innovation and learning by regulating are central to this research project. Fleck's (1988) concept of innofusion refers to innovation in technological diffusion, pointing out how the innovation process continues while an artefact is implemented and used. Besides the transformation of the technologies along with their applications and meanings by the users as they try to find meaningful ways to integrate them into their everyday lives, innofusion also emphasises how these innovative ways of using a product are also fed back to the technology designers to be incorporated in newer versions of the products when there are sufficient linkages or channels of communication between users and suppliers (Williams et al. 2005). The Social Learning approach and the associated processes of innofusion and domestication are vital for the goals of this research project as they provide the main explanatory devices through which the findings will be analysed. Creative Commons is an innovation in intellectual property rights that claims to facilitate technological innovation and provide the means for the production of more decentralised, inclusive, collaborative and democratic models of organisational configurations for cultural production. By studying the processes surrounding the adoption and domestication of the licenses by open content filmmakers through the lens of the social learning framework, I can provide an analysis that goes beyond the modernist and deterministic views that are dominant in socio-legal and new media studies. Instead of anticipating how the users of the licenses will engage with them and having somewhat utopian expectations of the democratisation processes that will occur straightforwardly through the use of the Creative Commons licenses and associated digital tools, the social learning framework underlines the uncertainty of these processes and how they are characterised by complexity, contingency and choice (Williams and Edge 1996).

Another useful concept closely related with innofusion is the user driven innovation model (von Hippel 2005). According to this model, users of various goods and services often take upon themselves to improve the given products by furthering the innovation process. Providing that there are sufficient channels of communication between users and producers, the interaction between them can be beneficial for both parts, as producers are able to improve and further innovate on their designs and users therefore manage to receive products which fit their needs better through a customisation process. Such interaction and direct information sharing has been made feasible through the lowering costs of communication that digital technologies have enabled. User driven innovation though, often goes beyond a simple feedback mechanism to the designers of products. Digital technologies give users not simply the tools to communicate directly with producers but also in many occasions to innovate themselves without the need for intermediaries. Furthermore, the innovation processes that digital technologies enable are of a less tangible nature and they often refer to cultural products. Such processes of innovation most often than not, take place not by an individual user but through a collaborative process of a community of practice. The typical example in this case is undoubtedly the FLOSS community. The FLOSS movement has created innovative products and business models through collaboration and aggregated work. As mentioned in the second chapter of this thesis, CC plays an active role in the building of such communities especially when they imply the free exchange of information and resources which are needed for the unfolding of the innovation processes. As user innovation becomes more central and gains economic importance, there is a greater urgency for information to be able to circulate freely and in a more democratic way, thus creating a rich intellectual commons (von Hippel 2005).

Learning by regulating (Sørensen 1996) refers to policy makers' attempts to establish mechanisms of influence suited for the development and application of new technologies. As Williams et al. (2005) point out, this concept draws from the notion of technology regimes developed by Rip et al. (1995), which seeks to

capture the expectations and visions, as well as the sets of rules, policies and regulations that contribute in shaping the ways in which new technologies are developed and appropriated. Such expectations and regulations thus provide the general framework within which local design and appropriation activities can be analysed. Intellectual property and its enforcement within the new digital environment require new types of regulations as digital media have different socio-technical characteristics to those of its predecessors. In the case of the development of the Creative Commons licensing suite, an attempt to resolve these newly emerged issues is taken up by private actors by developing an alternative licensing system which is claimed to be better suited for the demands of the new information economy; and by trying to enrol supporters and users in their visions and products. CC is therefore a clear example of how both public and private players, in promoting their visions of technology, seek to establish their offerings at the heart of technology regimes (Sørensen 1996; Williams et al. 2005).

I propose that CC can be regarded as a tool in learning how to domesticate digital media through regulation. We can distinguish between different levels of social learning around this legal innovation. Within the broad field of digital media CC is used instrumentally to minimise friction and facilitate the smooth running and interoperability of multimedia, it is therefore used as a fix that facilitates social learning in digital media. On a more specific and focused level in order for CC to actually work successfully and achieve their stated purposes, the licenses themselves require to be domesticated and re-imagined within specific local settings. They therefore entail processes of negotiations and perhaps conflict to take place between actors with different agendas, commitments and resources. In a multi-dimensional process of social learning and depending on the perspective one takes, the licenses are both a tool of learning by regulating and the field where social learning of legal innovation takes place.

Although the Social Learning framework is mainly used to analyse innovation in technological systems and artefacts, given the flexibility of its basic concepts as well as the distinctive characteristics of the legal innovation that is Creative Commons, it would be not just appropriate but also possibly unexpectedly revealing this pairing of STS analysis with legal innovation which is more fluid, conceptual and disembodied than most of the tangible technologies and systems that form the usual focus of STS research. In STS, technology is conceptualised as more than just artefacts and knowledge; it is rather a heterogeneous configuration of elements that are aligned and work together (Geels 2005). When examining innovation systems, social and technical aspects are always intertwined and constitute and shape each other. By linking Social Learning in Technological Innovation with an examination of the Creative Commons licenses, we could both explore the sociotechnical dynamics of the licenses, which are left poorly illuminated by mainstream legal scholarship; but we could also aid in expanding the focus of the Social Learning framework itself beyond technological systems so that it would also incorporate legal innovations. Innovation whether it is technological, legal, organisational or in any other field, it primarily produces knowledge and skills, and it is the appropriation and further development of this knowledge that diverse fields of innovation have in common, therefore allowing analysis with similar conceptual tools. The Social Learning approach helps us trace the ways that disembodied and generic knowledge is produced and how it becomes embedded in specific social settings, as well as the dialectic relationship between these processes (Sørensen 2002).

## **B. Methodology and Research Design**

### **3.4 The Importance of Socio-Legal Research in the Study of Legal Phenomena**

A number of scholars have recently been preoccupied with demonstrating how legal research can benefit from employing social sciences' methodology and how methodological issues and debates in social science are relevant to the study of law (Banakar and Travers 2005). When conducting socio-legal research<sup>21</sup> the focus is not simply on the outcome but mainly on the processes and in exposing the actual practices that are taking place within our field of enquiry. Law is a social institution similar to religion, medicine or education and therefore also falls within the scope of sociological inquiry. Social scientific studies of law, can thus provide us with interdisciplinary alternatives that challenge the traditional forms of legal research (Wheeler and Thomas 2000). Needless to say that lawyers and sociologists have different perspectives, goals and frameworks, which leads to great challenges when conducting interdisciplinary research. For such research to be successful, socio-legal researchers need to go beyond doctrinal law research, and they should be aware of and address the theoretical and philosophical debates that are central to social science methodologies (Banakar and Travers, 2005).

Hutchinson (2006) describes the reluctance of many legal scholars to look beyond the doctrinal aspect in their research and claims that they therefore remain rather limited in their research perspectives. In order to broaden their approaches they should start adopting qualitative research methodologies, which she describes as an exploration of social relations and reality as they are

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<sup>21</sup> When referring to socio-legal studies I include all social scientific studies of law related phenomena. It should therefore not be confused with the Socio-Legal Studies movement as it is developed in the UK, which has grown mainly within law schools and it largely treats social sciences as a tool for gathering empirical data on the role of law in society. Such approaches usually neglect to adopt the more reflexive approaches of social sciences (Banakar 2009). The concept of socio-legal studies as used within this thesis encompasses work on legal sociology (as used in West European Countries) and Law and Society scholarship (as developed in the US).



being experienced, and this is a radical departure from focusing on how a specific case is being dealt with. Socio-legal approaches can therefore bring novel insights to legal scholarship by focusing on the routine and ordinary rather than the extraordinary (Podgorecki and Whelan 1981). Dobinson and Johns (2007) further argue that most current legal research can be more easily categorized as quantitative rather than qualitative. This argument is revealing of the established paradigm of legal research, which holds that there is somehow an objective approach to establishing the law. But since the law does not exist independently of the society where it is applied, legal researchers will have to acknowledge that the law cannot be objectively isolated and that “law is reasoned and not found” (Dobinson and Johns 2007: 22). Dobinson and Johns (2007) also mention the advance of digital technologies as an additional reason to advocate in favor of socio-legal research and methodology. Digital technologies have facilitated access to vast databases of online material, making legal research less structured and less focused on some sort of final primary authority. Instead, legal researchers can have access to a wide variety of sources, which they can shift at will, in order to provide various and multiple pictures.

Introducing sociological insights into legal research is a reasonable and constructive project, although it has only marginally been accomplished in practice despite the efforts of socio-legal scholars to integrate legal and sociological ideas (Banakar, 2009). Cotterrell (2006) points out that law has no truth of its own and sociology with its reflexive concepts and methodologies is able to actually grasp the essence of legal doctrine by providing it with deeper insights. This is also perhaps the reason why social science, in contrast to mainstream legal research, allows many competing sets of theoretical and methodological approaches (Banakar, 2009). This unique understanding of social phenomena that sociology allows, goes beyond the mere self description of the law in order to reveal the different layers of meanings, interpretations, functions and power structures, based on the actual practices of the actors

involved and not on prescriptive and normative accounts about how a situation ought to be.

### **3.4.1 Applying Socio-Legal Research Methodologies to Copyright Law**

Before the development of digital technologies, copyright issues affected principally a small minority of the population. They were clearly a subject for study through “Doctrinal Law” and “Law in the Books”, but when it came to the “Raw Law” (MacCormick, 1994) from the citizens' point of view, copyright law had a limited effect in the ways social actors were conducting their everyday lives. As copyright law in most, if not all territories was and still is rather long, as well as abstruse, and the statute extremely complex and perhaps some may argue imbalanced (Samuelson, 2007); it is obvious to any potentially interested party that it doesn't render itself easily interpretable by laypeople. But this did not present a major problem when the people who really wanted and needed to know anything about it were the industry lawyers who were mainly mediating inter-industry disputes.

With the advent of networked, digital technologies though, and more particularly the internet, copyright law is affecting and regulating the daily activities of all social actors and of all the members of our societies. Tehranian (2007) in a most amusing article goes through the average day of a professor, describing a variety of common, everyday activities and by the end of the day he recounts 83 acts of plausible infringements on copyright law, without any of his activities involving peer to peer file sharing, simply because in these actions there was some sort of copying involved. It appears that the expansion of copyright law often has an adverse effect in previously unregulated activities, leading people to massive copyright infringement, quite often without even them realising that they are doing so. In the cases where there is knowledge and awareness of potentially infringing activities, as in the case of peer to peer downloading of content, the mere extent of these activities, Tehranian (2007) argues, sets them apart from common criminal behaviour and beg for an explanation beyond the boundaries of doctrinal law and law in the books approaches. It is therefore made apparent

that in order to truly engage with all the social actors and institutions involved in such processes we need to examine copyright law through a socio-legal perspective.

Copyright law is nowadays not a set of distant concepts involving only the legally trained within a society. Therefore, it is no longer sufficient attempting to approach it from a strictly legal perspective involving legal research processes and being preoccupied with the clarification of normative positions. This would leave crucial issues such as the motives and interpretations of the principle legal and social actors, as well as the involvement, expectations and experiences of users of copyrighted material poorly illuminated. Instead, a socio-legal approach can truly assist in the clarification of such issues and offer the insights of an interdisciplinary analysis of the interaction between technological innovation, legal innovation, different relevant groups and structural transformations within the broader socio-technical system. As Schiff points out:

“It is law as individual members perceive it, know it and understand it, that requires to be evaluated, not those internally complex definitions of law of lawyers, judges, jurists and others concerned with the practical administration of the law. Once we have gained knowledge about people's knowledge and perceptions of law and individual laws..., we can go on to examine to what extent legal rules are used and manipulated by individuals, in other words, to what extent they are part of social life at the microcosmic level at which social order is constructed”. (Schiff 1981: 161).

It should therefore be obvious that analysing and researching copyright law, the potential for its reform and the alternative suggestions, namely open content licenses, could never be complete without taking into account the social conditions and settings which contributed to their formation in the first place. The legal system is one amongst many social constructs, and it acquires its meaning and purpose through individual and collective understandings of it, while simultaneously contributing to the formation of these very understandings. This interactive process is an extremely complex one involving heterogeneous actors, various layers of interpretations and multiple levels of analysis. If we wish to shift the focus of legal research on copyright in order to

include the all the legal and social actors involved in this interplay, whether individuals or organisations, we have to look beyond the black letter law approach and examine our subject through a sociological methodology.

### **3.5 Motivation and Framing of the Research Project**

The first aspect of the research design process according to Blaikie (2000) is the identification of the topic or problem. My initial interest in this project developed from a perceived gap in the socio-legal literature, combined with my own enthusiasm and curiosity for the potential innovative capabilities of open models for cultural creation. While some legal scholars have explored the different implications for creativity that are provided through the application of the Creative Commons licenses within the current copyright law system (Hietanen 2007; Cheliotis et al. 2007; Elkin-Koren 2005; Rens 2006; Dussolier 2006; Elkin Koren 2005), they either approach this subject through a normative lens, as they come from a strictly legal perspective involving legal research processes of inquiry and being mainly preoccupied with the law in the books point of view; or when they attempt to consider social factors they remain rather descriptive, employing quantitative methodologies in order to offer a broad picture of the magnitude of CC adoption, without being concerned about going into an in-depth analysis of the different players and the interactions that shape CC licenses' adoption, or the innovative processes that such adoption may or may not encourage.

On the other hand STS literature although mainly focused on the analysis of technological innovation, it provides an appropriate theoretical perspective and various useful concepts and tools for the examination of legal innovation as well. This doctoral research uses the Social Learning framework (Sørensen 1996; Williams et al. 2005) in order to capture the diverse and distributed processes of learning around open cultural production, that independent filmmakers engage in, through the use of both legal and technological innovative tools. As independent filmmakers struggle to domesticate their new digital means of cultural production and to situate them into their practices, novel organisational configurations take shape across diverse spaces and timespans. This research project is thus adopting an interdisciplinary approach to the analysis of the interaction between technological innovation, legal innovation and diverse

groups of adopters and non-adopters of the CC licenses within the independent filmmaking community, in order to provide a rich understanding of the structural transformations occurring within their broader sociotechnical system.

### **3.6 Research Questions, Objectives and Potential Audiences**

The research questions which guided this project were set to investigate whether, and to what degree the Creative Commons licenses' adoption contributed to the configuration of open models of cultural production, through the independent filmmakers' translation of open source software methodologies to their own creative endeavours. Niva Elkin-Koren (2005) has summarised the core ideology of the CC organisation as relying on the importance of accessing pre-existing works in order to generate new creative content; and as current copyright law creates barriers for individuals in accessing such content by increasing the costs of negotiation, CC is meant to provide a new way of exercising copyright in a way which promotes sharing and reusing, especially in the context of networked digital media. It would therefore be essential to examine whether CC live up to their stated principles through the eyes, experiences and practices of the independent filmmakers themselves, and whether these practitioners, who may embrace or resist the licenses' adoption, share a similar understandings with regards to their application and purpose.

There are three broad research questions guiding this project. The first question addresses independent filmmakers' perceptions of the CC licenses and their motivations for adoption. The second focuses on the actual practices and strategies that open content filmmakers develop around their projects. And the third deals with the problems and frictions stemming from the use of the CC licenses by independent filmmakers:

**R.Q. 1:** What are the factors that motivate independent filmmakers to adopt the Creative Commons licenses and what are the understandings and meanings they ascribe to them?

**Specific objectives:**

- Explore independent filmmakers' perceptions of the general film industry and their position within it.
- Explore filmmakers' understandings of copyright law and its relevance to their creative practices.
- Identify filmmakers' goals and motivations for licensing their works under Creative Commons.

**R.Q. 2:** What are the alternative models for cultural production that independent filmmakers develop around open content film projects?

**Specific objectives:**

- Describe the open models for content creation, distribution and revenue generation that open content filmmakers configure through their practices.
- Identify the role that CC licenses play in developing such models: explore how the use of the licenses influences the ways they organise, regulate, carry out and negotiate the production, distribution and marketing of creative works.

**R.Q. 3:** What are the conflicts, problems and tensions that independent filmmakers have to navigate through in order to develop a sustainable model for open cultural production?

**Specific objectives:**

- Explore potential problems that open content filmmakers have to address regarding CC licenses' application to their projects.
- Examine how they navigate through such problems and tensions.
- Explore the reasons for independent filmmakers resisting CC license adoption.

Each of the above questions provides insights and is necessary in answering the one that follows. By focusing on these questions not only am I able to contribute to the understanding of current trends in the use of digital tools and resources, but also I can address in a systematic manner the different issues and problems faced by creators who engage in open models for cultural production. This research could also form the basis for evaluating and suggesting solutions to possible controversies on the way CC should develop in order to achieve their stated goals and indicate complementary mechanisms of either legal, technological or social nature in order for CC to become a successful innovation.

Empirical studies on copyright law related phenomena are useful for both policy and law-making purposes but also for revealing trends relating to a new mind-set regarding intellectual property in general. The identification of such changes and trends are therefore essential in order to both inform practitioners, and convince and influence legislative and policy changes. It is often the case that the voices of the users are not heard as they are being crushed between both the strong lobbying efforts made by the copyright industries and the feisty proclamations of the open rights activists. Using socio-legal perspectives and methodologies, a researcher is able to track the expectations and attitudes of the user, and in particular the user-creator, whose standpoint is essential and should be seriously considered when decisions are made as to the appropriate scope and nature of copyright protection, whether defined by law or influenced through policy actions (Hutchinson 2006).



### **3.7 Research Strategy**

The translation of open source ideas to areas beyond computer programming involves both similarities, as it does differences and obstacles. Several key notions such as commerciality, advertising, property, moral rights and attribution can mean very different things for an artist, an author, a lawyer and a software developer. From the stated aims and research questions it is clear that I am interested in understanding the actors' meanings for their activities and choices. In Blaikie's (2000) terms this research is informed by a constructivist epistemology and follows an abductive research strategy, that is to say the study will investigate the actors' meanings and interpretations for their actions.

Copyright licenses are not immutable things but flexible social constructs without an absolutely rigid shape (Felstiner et al. 1980). That is not to say that licenses are not actually conditioned, and inscribed by the values that the Creative Commons organisation identified as most appropriate according to their perceptions of their potential users. Nevertheless, they are still open to diverse readings and interpretations. What is interesting in this case is to understand and capture how the affordances and use of these licenses can be interpreted flexibly (Pinch and Bijker 1987). Interpretive flexibility challenges the existing understanding of how technology, or in this case legal innovation, is employed by users. Studying a social process as it occurs, implies focusing on the social and legal actors involved, their attitudes, practices, objectives and motives as these evolve over time.

### **3.8 Choosing a Qualitative Research Methodology: Multi-sited Ethnography**

The aim of this thesis is to acquire a rich understanding of the contingent meaning of the CC licenses by independent and open content filmmakers, as well as how the use of the licenses motivate and inform their creative practices and contribute to innovation processes. Such concerns are clearly better tackled through a qualitative approach to research. As Blaikie points out:

“the chief characteristic [of qualitative research] is a commitment to viewing the social world - social action and events - from the viewpoint(s) of the people being studied... discovering their socially constructed reality and penetrating the frames of meaning within which they conduct their activities”. (Blaikie 2000: 251).

Moreover Blaikie (2000) highlights that qualitative research methodology regards the social world as processual rather than static. This conceptualisation captures one of the main premises of this research project, since I am explicitly concerned with capturing the socio-technical dynamics of CC adoption through the changes and re-configurations involved in independent filmmakers' use of the licenses. Creswell (2007) also points to the “emergent design” of qualitative research where the initial research design may change or shift after the researchers enter the field and begin the data collection process. The ever evolving, presently unfolding and rapidly changing nature of my research topic necessitated precisely such a design. Indeed, some of the most valuable insights that this research has yielded, come not only from the initial considerations of my research design, but also from the consequent inclusion of a set of actors whose relevance was demonstrated after the data collection had already started: the independent filmmakers who resist CC licences' adoption, or the non-users.

Ethnographic research has a longstanding tradition within the social sciences (Atkinson et al. 2001). It comprises of a wide variety of methods such as participant observation, different types of interviews, field notes, analysis of secondary data and can even include quantitative methods if these are deemed

appropriate and consistent with a given research project (Whitehead 2005). Ethnographically informed studies have provided rich and in depth understandings of the social settings in which they are employed, uncovering nuanced, layered and complex landscapes through the perspectives of the principal actors involved.

More specifically, the precise methodology that I deemed more suitable for this research project was the multi-sited ethnography perspective, given how open content filmmaking involves players who are dispersed through a wide range of locales, working on the same project at different times and through digitally mediated spaces and practices. Multi-sited ethnography is indeed targeted towards the deployment of ethnographic techniques in diverse localities through 'following the actors' (Latour 2005), as well as their connections, associations, understandings and practices as they circulate through different spaces (Falzon 2009; Farnsworth & Austrin 2010; Holmes & Marcus 2004). Such spaces can be digital or physical, regional, local or translocal, since processes and practices are often spatially fragmented and different locations can reveal different aspects of open cultural production.

Marcus (1995) points out that culture is embedded in macro-constructions of a global social order, so if we want to acquire greater insight we also need to move methodologically from the single site location of traditional ethnography to multiple sites of observation and participation both spatially and temporally. Multi-sited ethnography is suitable for more complex objects of study and interdisciplinary work that cross cut dichotomies such as "local and global", "online and offline" or "digital and physical". It therefore, perfectly encapsulates the main concerns of this research project, which seeks to bring a sociologically informed perspective to the study of a legal construction (CC licenses) through the practices and understandings of the actors involved (independent filmmakers) in cultural production through networked, digital technologies. The organisational configurations that open content filmmakers develop through their situated practices, transcend formal boundaries as they

circulate through networks and include diverse actors, multiple locations and spread across multiple time frames.

### **3.8.1 Selecting the Research Sample**

The fieldwork process for this doctoral research lasted from June 2010 until November 2013. Having sketched out the initial boundaries of the population of interest, namely independent filmmakers who license their work under Creative Commons licenses, I also had to choose the most appropriate means of sampling it. Purposeful sampling refers to the selection of data units that exhibit features salient to the research topics (Marshall 1996; Onwuegbuzie and Collins 2007). It is therefore appropriate when the research does not aim to make statistical generalisations on the basis of random samples but it rather yields qualitatively based, contingent theories of social phenomena.

So I initially approached the most prominent actors in the OCF community, which were identified through the Creative Commons website, as well as through open culture related websites, weblogs and press releases. Indeed, when I started my fieldwork, Creative Commons licensed films were a relatively new approach to legal rights management in the filmmaking industry, although the numbers of filmmakers that use the licenses have significantly increased within the past five years. I continued to recruit research participants through the referral of these initial interviewees, as they identified other key players, which they suggested that they held salient positions within the field. This particular form of purposive sampling is known as snowball sampling (Biernacki and Waldorf 1981; Marshall 1996). Snowball sampling enabled me to efficiently track relevant players and to clarify the population of interest through the perspectives of the actors themselves. But it also allowed me to identify the relevance of a part of the independent filmmaking community that has not received any attention in scholarly analysis of the CC licenses: that of the independent filmmakers who resist open licensing adoption.

For the first stage of the research I identified twelve projects within the OCF community. After sending an introductory email outlining the goals, motivation and methodology of the research, I managed to get access to eight of them who agreed to provide me with an interview. These projects are:

- **Strange Company.** Based in Edinburgh, UK, Strange Company is a group of machinima creators and distributors, using real time 3D graphics rendering engines to make films. It is the oldest machinima production company, as it was founded in 1997 by Hugh Hancock and Gordon McDonald. Amongst its various projects “BloodSpell”, which was released in 2008, is Strange Company’s first feature length machinima animated film, released initially as a series in 2006 and in 2007. The episodes were then remastered into the feature film. This is available to view or download online as it is licensed under CC BY-NC-SA. Hugh Hancock was interviewed for this research on October 21<sup>st</sup>, 2010.
- **A Swarm of Angels (ASOA).** Based in Brighton, UK, ASOA is an open source film project founded by Matt Hanson with the intention to be the first internet funded and distributed feature film. The goal was to tempt 50,000 micro-investors into paying 25£ each in order to produce this film. In return they would get to make key decisions such as approving the screenplay, soundtrack and choosing film locations, and once film production had began, they would be able to work on the set of the film. ASOA would then be released online freely available to anyone to download and edit. Advisors and investors to ASOA include: the science fiction writer and copyright activist Cory Doctorow, the graphic novelist Warren Ellis, the musical mashup artist Eric Kleptone and the digital film producer Tommy Pallotta. The project won the R&D/Innovation category of Britain's Digital Elite awards in October 2007 and it is licensed under CC BY-NC-SA. Matt Hanson was interviewed for this research on December 16th 2010.

- **MOD Films.** Founded in London, UK, MOD Films produces “remixable” film content and technology aimed at new cinema platforms. Through documentation and packaging of the film production, MOD helps to support future use of the films as digital video releases or as source material for online communities to experiment with. Michela Ledwidge started MOD Films in 2004 with a NESTA Inventions and Innovations Award. Inspired by the practice of game modding, MOD Films’ aim is to demonstrate how regular films could be given to the audience in a malleable form using internet and video game technology. Ledwidge filmed her film “Sanctuary” in 2006 and all its elements including hours of production footage, sound effects, dialogue, storyboards, concept drawing and still photos are available under CC BY-NC-SA. Michela Ledwidge was interviewed for this research on October 15<sup>th</sup> 2011.
  
- **Star Wreck: In the Pirkinning** is a 2005 motion picture produced by the 3d production company “Energia” based in Tampere Finland. It is the seventh production in the Star Wreck series and the first of professional quality and feature length. Filmmaker Timo Vuorensola used a Finnish social networking site to build up an online fan base that contributed to the storyline, made props and even offered their acting skills. In return, Star Wreck was released online under a CC BY- NC-ND license. To date, the film has been downloaded over 9 million times. Star Wreck is one of the most financially successful CC licensed films as, by the time of the interview, online sales of merchandise had generated \$430,000 while film production cost \$21,500 to complete. The team had also secured a mainstream distribution deal with Revolver Entertainment in the U.S. And Britain. Timo Vuorensola was interviewed for this research on July 13<sup>th</sup> 2011.
  
- **Blender Foundation.** Based in Amsterdam, Netherlands, the Blender Foundation is a non-profit organisation responsible for the development of Blender, an open source program for three dimensional modeling. The

foundation is noted for having produced the animated short films “Elephants Dream” (2006) and “Big Buck Bunny” (2008) both released under CC-BY. Blender foundation's stated primary goal is to give the worldwide internet community access to 3D technology in general, with Blender as a core. The foundation is chaired by Ton Roosendaal, the original author of the Blender software, and it is funded by donations. Ton Roosendaal was interviewed for this research on October 23<sup>rd</sup> 2011.

- **Stray Cinema.** Stray Cinema is an open source film project, which started in Barcelona, Spain. The raw footage of the initial film has been made available for the public to download from the Stray Cinema website under a CC-BY license. The idea behind Stray Cinema is to provide people with the opportunity to create their own versions of the film by both manipulating original footage and adding their own scenes, music etc. The films are judged every year by their online community and the top five ones are screened each year alongside the original film cut at the official annual Stray Cinema screening. Each year the screening takes place in the country where the winning film originates from. Michelle Hughes, the founder of Stray Cinema was interviewed for this research on January 25<sup>th</sup> 2011.
- **The Cosmonaut.** The Cosmonaut is a Spanish science fiction feature film developed by the Riot Cinema Collective based in Madrid, Spain. The film is directed by Nicolas Alcala and produced by Carola Rodriguez and Bruno Teixidor and it is available under CC BY-NC-SA. It is notable for its use of crowdfunding techniques, similar to the ones employed by “A Swarm of Angels”. The public can participate in funding the film and become involved in its production and depending on the level of the contribution certain investors can own a percentage of the film's profits. Furthermore, it aspired to be the first film in the world that will put all the filming's raw footage at the audience's disposal. Nicolas Alcala was interviewed for this research on May 17<sup>th</sup> 2011.

- **Nasty Old People.** Nasty Old People is a 2009 Swedish film directed by Hanna Skold and released under CC BY-NC-SA, while it premiered on the file sharing site The Pirate Bay. According to the creators such means of distribution incorporated an “ecological” dimension as they dramatically decreased the distribution costs. The open source nature allows users to contribute additional features such as subtitles and therefore improve the project as a whole. Nevertheless, the creators have expressed concerns about the viability of such a model, which is based on voluntary donations. Its major advantage, on the other hand, is perceived to be its value as a marketing and promotion tool for the creators. Hanna Skold was interviewed for this research on September 9<sup>th</sup> 2012.

The participants pointed out and facilitated access to four additional open film projects, as well as eight independent filmmakers who although they had not licensed any of their films under Creative Commons, they nevertheless worked with platforms or other filmmakers who use open licenses, and in a few occasions they have licensed certain assets of their films under CC. Furthermore, Hugh Hancock introduced me to “Shooters in the Pub”, the monthly, casual meetings of independent filmmakers in Edinburgh, UK. “Shooters in the Pub” is essentially a networking event for filmmakers but it is also open to anyone with an interest in cinema and filmmaking. It takes place at the Cameo cinema in Edinburgh and it is the offline extension of an online network for independent filmmakers called “Shooting People”. Through the monthly meetings of “Shooters in the Pub” I managed to extend my network of participants and discuss about my research with independent filmmakers who were not using CC licenses. It consequently became apparent that some of these non-users had nonetheless a highly informed picture about the Creative Commons licenses and held strong opinions and beliefs about how their use influence the whole industry and their own practices. This surprising fact significantly enriched my research as it pointed to an unexpected and revealing direction regarding criticisms and the fragmentation of open content filmmaking.



The four additional open content filmmakers who agreed to be interviewed are:

- Nina P.: independent filmmaker, cartoonist and free culture activist – interviewed on November 11, 2012.
- Vincent M.: Independent filmmaker, photographer and sound artist – interviewed on June 27, 2011.
- Jimmy B.: independent filmmaker and software developer – interviewed on October 8, 2012.
- Simon C.: independent filmmaker – interviewed on May 14, 2013.

The eight independent filmmakers who use CC licenses for some of their practices are:

- Chris C.: independent filmmaker and video producer– interviewed on April 2, 2013.
- Kayle N.: filmmaker and game developer – interviewed on December 12, 2011.
- Anne H.: independent filmmaker, digital archives – interviewed on December 10, 2012.
- Felix G.: independent filmmaker and photographer – interviewed on November 12, 2011.
- Josef M.: independent filmmaker – interviewed on February 2, 2013.
- Matthias M.: Independent filmmaker – interviewed on February 6, 2012.
- Louis R.: independent filmmaker, film festival organiser – interviewed on May 11, 2012.
- Jamie K.: Independent filmmaker, film producer and digital rights activist – interviewed on June 12, 2011.

The eleven independent filmmakers who are non-users of the licenses are:

- Paul T.: Independent filmmaker – interviewed on August 12, 2012.
- John B.: Independent filmmaker – interviewed on May 16, 2012.
- Gary W.: Independent filmmaker and film producer – interviewed June 8, 2012.
- Mike M.: Independent filmmaker – interviewed April 12, 2012

- Finn H.: Independent filmmaker and software developer – interviewed on November 22, 2012.
- Marcy G.: Independent filmmaker – interviewed on November 4, 2011.
- Joshua C.: Independent filmmaker and sound editor – interviewed on October 19, 2012.
- James F.: Independent filmmaker – interviewed on October 14, 2012.
- Jon C.: Independent filmmaker, photographer and web developer – interviewed on September 28, 2011.
- Peter G.: Independent filmmaker and digital entrepreneur – interviewed on October 24, 2013.
- Tom J.: independent filmmaker – interviewed on November 10, 2013.

It should nevertheless be noted that independent filmmakers use Creative Commons licenses in a very flexible and fluid manner. So, participants who had not used the licenses at the time of the interview, contacted me later to inform me that their newest project was now actually licensed under CC. Others after completing an open project went back to more traditional licensing terms. CC, as the further analysis will also demonstrate, is not a permanent feature of users identity but a possible modality of different projects and at different phases.

As my research complied fully with the ethical codes of the School of Social and Political Sciences at the University of Edinburgh, I offered to my participants the use of informed consent and confidentiality for either parts of the interview or for the whole. All the filmmakers who were identified through the Creative Commons website expressed no concerns about remaining anonymous, and in fact some of them even emphasised that they wanted their names and the names of their projects to be clearly stated in any future publications that this research may lead to. However, some of the subsequent research participants wished to remain anonymous or make statements “off the record”, and therefore they were given a pseudonym instead. Their background details, although they remain broadly accurate, they are also sufficiently vague and generalised, so that they will not run the risk of being identified or connected with any specific quotes. Indeed, according to the UK Data Service:

“If you need to anonymise textual data, information should not simply be removed or blanked-out. Pseudonyms, replacement terms, vaguer descriptors or systems of coding should be used to retain maximum content... When anonymising qualitative data, consideration should be given to the level of anonymity required to meet the needs agreed during the informed consent process.” (UK Data Service)<sup>22</sup>

### **3.8.2 Gaining Access**

Independent filmmakers are a group that can be understood as “professionals” due to their expert knowledge bases, and they therefore form part of a wider social collective labelled “elites” (Hertz and Imber 1995). Although professional elites are traditionally regarded as specialists groups who are particularly difficult to acquire access to (Gamson 1995), this project addressed a subset of independent filmmakers, which publicly advocate their commitment to open exchange of ideas and were therefore keen to provide details of their respective projects and share their stories, as this also benefited them by providing additional exposure. A potential flip side of this fact, is the possibility that some of the participants may have regarded the research interviews as an opportunity to further promote the positive aspects of their projects, while downplaying the possible frictions and problems that they had to face. This was dealt with by remaining reflexive towards alternative interpretations of the narratives that the respondents were offering, as well as combining such accounts with the ones given by non-users of the licenses. Also, while negotiating access I pointed out how the outcomes of the research could perhaps be beneficial to my interviewees in tackling potential problems that they or their colleagues may be facing.

Ostrander (1995) argues that the first strategy with regards to a successful interview is to “do your homework”, that is, to learn the background and language of the professional group in question. This enables discourse with a professional group in their own terms. In order to do this, I took advantage of

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<sup>22</sup> <http://ukdataservice.ac.uk/manage-data/legal-ethical/anonymisation/qualitative.aspx>

the postgraduate courses offered by the University of Edinburgh and which are open to be audited by students from different schools. During the academic year of September 2009 – May 2010 I audited Intellectual Property related courses offered by the School of Law, and Film Theory & Media courses at the Film Studies Unit in the School of Literatures, Languages and Cultures at the University of Edinburgh.

Furthermore, from September 2009 until June 2012 I volunteered as a copy editor for SCRIPT-ed, the online journal associated with SCRIPT (the Center for Research in Intellectual Property and Technology Law) based in the Edinburgh University's School of Law. It is also worth noting that the Creative Commons organisation collaborated with SCRIPT to create UK: Scotland jurisdiction-specific licenses from the generic CC licenses, with my former supervisor Dr Andres Guadamuz as the project lead for the localisation. This also relates to the second research strategy suggested by Ostrander (1995) concerning the employment of the researcher's own social network in order to gain access.

### **3.8.3 Research Methods – Data Collection**

Within the OCF community there are different projects with diverse aims and in various stages of development, which are essentially facing very particular issues and therefore, developing different strategies to overcome them. Such diversity of open film projects also requires the employment of multiple methods of data collection. Therefore, a series of techniques were used to ensure a multidimensional approach to the examination of open content filmmaking. The primary data collection method was through face-to-face, semi-structured interviews. Additional methods included the documentary review of several online and offline documents and resources; as well as unstructured observation in settings such as open film festivals, remix cinema workshops and open culture groups' meetings and conferences.

As Kvale and Brinkmann (2009) argue, qualitative research interviews are particularly appropriate when the research focuses on the meaning of particular

phenomena to the participants, as well as their perceptions of processes within our field of interest. Qualitative interviews are also very efficient for generating historical accounts or narratives of events related to social change (Cassel and Simon 1994). Arksey and Knight (1999) point out that semi-structured interviews compared to closed-questioned and unstructured ones, are the most common and diverse of the three formats. They are more similar to unstructured ones because they generate qualitative data. The interviewer though, does have specific topic areas and themes to pursue.

Between October 2010 and November 2013, I conducted 31 semi-structured interviews with independent filmmakers. These lasted on average 60-75 minutes, with the longest one being over two hours in duration and the shortest one approximately 40 minutes long. They took place mostly in public spaces such as cafes and restaurants, but also in some occasions in the filmmakers' private spaces like their homes and studios. My interview guide was indeed loosely structured around key questions regarding motivations for CC licenses' adoption; perceptions of the film industry and related legal and technological issues; short term and long term strategies around open content filmmaking; and potential problems and limitations of open methodologies for filmmaking. Nevertheless, it allowed for great flexibility in order to follow up ideas, explore issues that interviewees regarded as more relevant to them, probe responses and ask for clarifications or further elaboration. It therefore allowed informants to answer questions in terms of what they see as important and give emphasis to particular topics of interest.

After conducting the interviews, on certain occasions, I continued interacting with participants by sending follow up questions via email, or in a more informal setting, by attending regional meeting, film festivals and open filmmaking related events. Following up interviews by email communication is a particularly useful tool for interaction especially when conducted alongside face-to-face interviews (Hine 2007). Although it has been argued that it is not as efficient as face-to-face interviews, it nevertheless allowed the respondents to

provide answers at their own leisure and make them more elaborate by providing links and online resources to exemplify their views, and thus they also generated very rich data.

Parallel to the interviews, I also collected data from online resources and documents, such as: film industry reports, open content film project reviews, filmmakers weblogs' posts, media articles, the Creative Commons mailing lists, open content and filmmaking forums, and official websites of open film projects and platforms. As representatives of a digitally enabled generation of creators, open content filmmakers rely heavily on the online environment to expose their views and filmmaking plans, and also to exchange ideas with other filmmakers or relevant actors. Indeed, there is a very rich dialogue unfolding through online mailing lists, forums and blogs where independent filmmakers address questions regarding innovative strategies for film production and distribution, as well as issues related to open content creation methodologies. The ease of access and wealth of data that this research method provided (Hookway 2008), was invaluable in its contribution to providing me with a much more clear understanding of open content filmmakers practices and concerns. With regards to documentary research however, additional caution is required from the part of the researcher as the available data have the drawback of not being written for the actual purposes of the research in question (MacDonald, 2001). The analysis should therefore extend from the documents themselves to the general context and circumstances under which they were produced in order to appropriately situate the data derived from them.

During the research process I became aware of a variety of activities that provide networking opportunities and spaces for exchanging ideas, and are targeted either towards open content filmmakers specifically or more generally towards creators who use open licenses for their work. The events that I managed to participate in were: the 3<sup>rd</sup> Free Culture Research Conference, which took place at the Free University Campus in Berlin on October 8-9 2010; The Remix Cinema Workshop, which took place at the Oxford Internet Institute

on March 24-25 2011; the Open Rights Group Conference, that took place at the University of Westminster in London on March 23-26 2012, The Open Rights Group Conference North, which took place at the University of Manchester on April 12-13 2013, the Barcelona Creative Commons Film Festival, which took place at the Barcelona Museum of Contemporary Art on May 9-12 2013; and the Nordic Creative Commons Film Festival, which took place in various venues throughout Stockholm on August 30 – September 8 2013. These settings provided me with the opportunity to conduct unstructured participant observation in the spaces where filmmakers and open culture activists meet to discuss and elaborate on their ideas. Apart from keeping a record of the conference and festival tracks and the sort of discussions these generated, I also kept a diary with notes, throughout these events, highlighting the diverse issues that were raised, as well as the attendants' various comments and interactions. Therefore, participant observation became a complementary ethnographic technique for data collection. Through such informal interaction with filmmakers and open culture advocates, I managed to explore participants' attitudes, their relations and purpose of interactions in settings they feel familiar with (Selltitz et al. 1964). These data provided a different perspective to the ones generated through semi-structured interviews, as they enabled me to see how participants interact with their peers, emphasising on the social dimension of their activities and consequently, they granted new perspectives in the analysis of their activities.

The use of multiple methods allowed me to obtain a more comprehensive understanding of independent filmmakers' engagement with open content production methodologies, although it is not meant to be applied as a source of triangulation. Triangulation has been seen to reduce bias and improve the validity of a research, thus echoing a positivist epistemology (Blaikie 2003). In contrast to this approach I assume the existence of multiple social realities from the outset and regard knowledge thereof as temporally and spatially contingent. My reasons for using multiple methods can be better described by the notion of

“crystallisation” (Richardson 2000), where what we see depends mainly on our angle of repose. Richardson explains that the image of the crystal...

“...combines symmetry and substance with an infinite variety of shapes, substances, transmutations, multidimensionalities, and angles of approach... Crystallisation provides us with a deepened, complex, thoroughly partial understanding of the topic. Paradoxically we know more and doubt what we know. Ingeniously, we know there is always more to know.” (Richardson 2000: 934).



### 3.9 Final remarks

Multi-sited ethnography was chosen as the research methodology for this doctoral research as it suggested itself as the most appropriate method to get an in depth account and understanding of the independent filmmakers' practices and perceptions around the application of open source methodologies to independent filmmaking. Carrying out ethnographic research is both a very interesting and a very challenging process, as it allows the researchers the freedom to explore different directions and discover unexpected dimensions of their objects of enquiry. Nevertheless, this approach and the methods that derive from it are not without their limitations or problems (Hoholm and Araujo 2011). Such problems often stem from the heterogeneity of actors involved and the inherent messiness of the processes under investigation. In academic research there are always multiple and diverse ways to examine a particular phenomenon, while factors like the theory, the literature and the researchers' own personal backgrounds influence our point of view. Events and settings can always be seen under a different light and the account that I provide throughout this doctoral thesis, while based on the data generated during the research, it also reflects the academic literature I engaged with, my methodological concerns and my own personal background (Hammersley and Atkinson 2007).

In the following three chapters I present the ethnographic data collected through semi-structured interviews, document review and unstructured observation. All three chapters aim to provide the kind of rich detailed picture that only qualitative research can offer. So in chapter four we will first explore the independent filmmakers' understandings with regards to the general filmmaking industry and their place within it, as well as their perceptions of the changing landscape through a focus on technology and copyright related issues. In chapter five we will focus closely on the strategies and organisational rearrangement that take place during the making of open content film projects, while chapter six will address the problems, tensions and subsequent fragmentation of the open content filmmaking movement.

## **Chapter 4**

### **Exploring the Circumstances that Lead Independent Filmmakers Adopt the Creative Commons Licenses**

#### **4.1 Introduction**

The themes explored in this chapter deal with the legal, technological and industry related factors that through their coevolution and interaction lead to the adoption of CC licenses by independent filmmakers and to the birth of the open content filmmaking movement. We will thus examine the participants' experiences, perceptions and conceptualisations with regards to the general landscape of the filmmaking industry. While the actual practices around CC adoption and implementation in film projects will be discussed in chapter 5, here we will trace the set of longstanding issues and obstacles that propelled independent filmmakers into experimenting with new forms of cinematic creation and innovating apart from the independent and mainstream industries.

We will learn through the participants' own accounts what sort of obstacles they face in their attempts to produce and distribute their films using the established channels of either the mainstream or the independent film industry. The ways that they find to overcome these obstacles rely strongly on the affordances of digital technologies and web 2.0 functionalities and platforms. By using such technologies and shaping them to accommodate their own needs, filmmakers become less dependent on the mainstream industry structures and pathways. So following what they identify as the "web route" alternative to both mainstream and independent filmmaking, they are able to make films with extremely low budgets and build their own niche markets, detached from the norms of conventional filmmaking. Given their innovative approaches to filmmaking and their disenchantment with the legal framework that supports the mainstream industries, filmmakers extend the scope of their experimentations to include the novel form of copyright protection that is the

Creative Commons licenses. Through CC license adoption, a new dynamic movement starts to form on the fringes of independent filmmaking that has come to be known as Open Content Filmmaking.

This chapter is divided into two main parts. In the first part we will explore the participants' understandings and conceptualisations with regards to the wider film industry environment (4.2) and their perceptions about their own position within it (4.3); while the second part focuses on the participants' understandings of their changing landscape with a special focus on digital technology (4.4) and copyright related changes (4.5), as well as how these changes and reconfigurations influence their creative practices and contribute to orienting them towards Creative Commons licenses' adoption.

Section 4.2 starts by giving an overview of how independent filmmakers have perceived the existing structures in the film industry, through their own experiences and perceptions. Participants are given a chance to explain with rich details why they choose to enter in such a precarious and competitive profession as independent filmmaking. They talk about the insecurity endemic within filmmaking but also about the passion and ambition that motivates them. They also explain why they view the current institutional arrangements of both independent and major studio industry as inefficient for fostering cultural creation. Nevertheless, they find a way to surpass these inefficiencies through the increasing availability of digital tools for production, distribution and commercialisation of their work. Digital technology tools and ICTs open up alternative paths for creation and occupational development on the fringes of the mainstream industry. This section also reveals how conceptualisations of digital technology's interaction with the content industries are often based on simplistic dualisms, referring to major industry's losses and independents' emancipation; while the lived reality of independent filmmakers' practice reveals that there are much more complex and nuanced dynamics at work. Change within content industries is an on-going process and it could develop in any direction. So major studios can also manipulate digital technologies to their

benefit and the outcome of these changes and rearrangements is not easy to predict, neither does it appear that it will stabilise any time soon.

Section 4.3 zooms in to focus on the participants' perceptions about their own place within the wider film industry landscape. We will therefore examine how they describe the practice of no-budget, DIY filmmaking that participants identify as distinctly separate from mainstream filmmaking. As opposed to being controlled and managed by powerful gatekeepers in return for financial investment, web oriented filmmakers take it upon themselves and their close circle to carry out all processes related to film production and distribution. Digital cameras, editing software and internet based tools, significantly lower the financial costs of film production, while they invite filmmakers to re-imagine the ways they can reach their audience and recuperate their financial investment. These innovative and experimental projects with regards to form and genre, depart from widespread definitions of what constitutes an actual film. Such projects challenge copyright law on two fronts: they partly rely on pre-existing intellectual property but their resources are extensively transformed so that one can hardly claim that they infringe on third parties' copyright; but they also cannot be straightforwardly protected by intellectual property laws themselves, as they do not adhere to the common guidelines and forms for audio-visual works. The way no budget, DIY filmmakers found to escape this conundrum is the adoption of Creative Commons licenses which allow far more flexibility both to creators and to audiences than traditional, all rights reserved copyright.

In section 4.4 we will examine more closely the precise types of digital technologies that made no-budget, web-oriented filmmaking possible. We will look both at technologies related to film production such as digital cameras and editing software, and at internet based tools and platforms that mainly facilitate distribution, marketing and financial recuperation. We will also see how these processes do not have clear margins and they often happen simultaneously when it comes to digital and open content filmmaking as opposed to

mainstream industry's process segregation. We will also look at major studios' involvement with online video and how they slowly but steadily begin to acknowledge that "online" does not necessarily equal "illegal", and they attempt to build supplementary distribution channels for their content.

Finally section 4.5 we examine independent filmmakers' beliefs and experiences with regards to copyright law and how they perceive it to affect their practices. Filmmakers claim that copyright law is inefficient as a legal tool in the digital domain. They also judge as highly hypocritical the mainstream industry's strategies of lobbying for the strengthening of Intellectual Property Law while the major studios themselves rely heavily on existing IP. They therefore feel that their own needs as creators are completely neglected and the available resources from which they can draw upon for further creation are being increasingly minimised. They therefore turn to the most prominent alternative for the management of their legal rights in the digital domain by opting for the adoption of Creative Commons licenses.

## **A. The Filmmaking Industry & Independent Filmmakers**

### **4.2 Alternative Career Pathways for Filmmakers: An Exploration of the Filmmaking Industry Landscape**

Starting out a career as a professional filmmaker can often appear as a daunting endeavour, especially for those who cannot rely on personal or professional connections with major industry players. While exploring participants' motivations for entering their chosen profession and their expectations of it, the respondents always acknowledged the precarious nature of being a filmmaker. Nevertheless, they judged that it was worth it for the privilege of pursuing a career in a field that excited and motivated them and for being able to communicate or enter a creative dialogue with their peers and the general public. Paul is a young filmmaker and a regular at the monthly meetings of Shooters in the Pub, a community for filmmakers and film aficionados in Edinburgh. He explains what led him to his chosen career path:

“Well I actually started out with photography, using my camera to capture, you know, fleeting moments.... But what fascinated me were the stories you could weave from the photographs. So I needed to go one step further, to create stories and have a dialogue with other people. Filmmaking helps me express myself but also helps me understand the world, to communicate with other human beings... Making a film, it is intense, even exhausting sometimes but something keeps me going, keeps me motivated” (Paul T., interview, August 12, 2012).

Paul's reasoning was very similar to all the explanations of all the filmmakers that were interviewed for this research. While they all acknowledged that their chosen career was very competitive and succeeding within their field was extremely difficult, they also felt that it fulfilled a deep need for communication and creative achievement.

In order to understand the more specific and partial choices that filmmakers make throughout their practice, such as choosing a copyright license or their distribution strategies, we'll need to question how they regard the more general professional landscape in which they enter. What different options do they see

when starting out their careers and what alternative paths do they perceive to be opening up to them as new and aspiring filmmakers. Most participants start explaining how in general the film industry can be broadly sketched as having two major components: the mainstream studio Hollywood model and the independent industry. Paul comments:

“OK, so picture it like this: there are two separate islands. No, scrap that, there is a huge continent and an island [laughs]... That’s to say, what we’re doing [referring to independent filmmakers] is miles away from what the major studios are doing. Not just the sort of films that we make but how we make them, how we make ends meet, what we’re after, even what we count as success and failure, it couldn’t be further apart from the Hollywood way of doing things. It’s not just the starting point that is different, our end goals are different and of course, all the processes in between.” (Paul T., interview, August 12, 2012).

Paul’s description draws attention to the fact that although the end product may be the same, namely a film that one can enjoy at the cinema or at home, the process of making an independent film varies radically from the way a film is made through the major studio industry. Paul explains that in terms of financing and the whole economic aspect of filmmaking, independent filmmaking especially low budget, DIY independent filmmaking resembles more what is happening in the art world than what is happening in the Hollywood system. Independent filmmakers rely on public funding and the non-profit sector for their financial backing. They often find support by individuals or organisations through a form of patronage or investment, and they also have to supplement this type of investment by using their earnings from non-filmmaking related activities, or their personal savings, even by taking loans. John, another Edinburgh based independent filmmaker and close friend and collaborator with Paul, explains that when it comes to film production, he frequently relies on friends’ and colleagues’ volunteering to work unpaid in order to complete a project and he is certainly willing to return the favour when his expertise are needed for a colleagues’ project. This sort of fragmentation of funding sources and precariousness of production resources can only add to the general uncertainty surrounding independent filmmaking but is also counterbalanced

by a great sense of achievement and creative reward once their project is completed.

We can now examine, through the participants' descriptions, their perceptions for the two main systems for film production: the one of the Hollywood major studio industry and the independent model of filmmaking:

**Perceptions of Hollywood Studio Model:** In their descriptions of the nature and structure of the general filmmaking industry, filmmakers talk about the major studio industry of the Hollywood model and then contrast this to the different national European systems. The British, French and Spanish national film industries are the ones featured most prominently in the respondents discussions of the sort of institutions that provide relatively strong support to independent filmmakers. Respondents reckon that independent filmmakers based in Europe and especially in one of the three aforementioned countries have a slightly better chance to find funding for their projects. At the other end of the spectrum we have the major film studios, which are the production and distribution companies responsible for releasing a great number of films every year. As most of the films exhibited each year, especially big budget films, are associated to one of the six major studios (20<sup>th</sup> Century Fox, Warner Bros, Paramount, Columbia, Universal and Walt Disney Studios), Hollywood studios are also the recipients of the most significant share of box office revenues in a certain market (Kerrigan 2010). Although all of the respondents agreed to some degree that the mainstream industry is very exclusive, conservative in terms of risk taking, with a rigid, vertical structure and tightly controlled points of entry maintained by powerful gatekeepers; they were also quick to point out that no matter how restrictive their business model is, it obviously works very well for them.

Gary is a filmmaker based in London who has been working within this field for the past six years. He explains his views with regards to the mainstream industry in this way:



“These major Hollywood studios are not simply like independent film studios but in a larger scale. They go far beyond that. They are actually really extensive networks with resources, knowledge and technics. Their expertise is in producing and marketing films, and they can mobilise their resources to produce high budget films and use all these extensive relationships to market them all around the world.” (Gary W., interview, June 8, 2012).

Such comments point to how well established and connected the mainstream industry is. The major Hollywood studios and their related distribution departments are members of the Motion Picture Association of America (MPAA), a powerful trade association with extensive lobbying power; while all other productions outside of this circuit are considered to be independent. Nevertheless, many successful mini-majors (MGM/UA, Lionsgate Films, Dreamworks Studios) as they are called, are closely connected as subsidiaries to the Majors (De Vany 2004), while other Hollywood based independent studios form strategic alliances with the major studios and often supply them with films. John comments on this on-going policy of alliances between majors and smaller companies:

“It is actually a very good way to stave off competition. It’s what happened in the eighties when the major film studios started buying off independent film distributors so they would preserve their dominance in the market. You know, if you can’t fight them then buy them.” (John B., interview, May 16, 2012).

Gary also points out how the major studio industry responds to the high risk nature of the film industry by controlling each part of the value chain and can therefore manage the volatility of the film market in ways that independent filmmakers are not able to:

“And keep in mind that the major Hollywood studios are not the end of the story. They are also part of a wider network of super powerful and diverse media conglomerates. So you find that the same corporation actually controls all aspects of film production, they control the means of distribution and all the important exhibition outlets. It makes for a very convenient and exclusive system.” (Gary W., interview, June 8, 2012).

Such demonstration of global dominance in film production, distribution and exhibition is perceived as oppressive by all of the respondents who point out that it leads to a lack of diversity and experimentation, two necessary factors to keep the film industry as a whole prosperous and engaging.

Hugh is an Edinburgh based filmmaker interested in innovative forms of cinematic storytelling. He offers a brief description of the processes involved in making a film under the Hollywood Studio model:

“In the Hollywood system there is an enormous pool of talent attempting to get their films made pouring into these very, very narrow gates which is the Hollywood financing. So if a filmmaker has an idea for a script, they will pitch it to a producer and in 1 out of 100 times the producer will think that it is a good idea. He will then pitch it to a studio and 1 in 100 times the studio will also agree and they will pay for a first draft. After they read the first draft, the studio will continue to support the idea just 1 in 100 times and they will then show it to the stars. Now if the stars like it the filmmaker will have to re-write it again and again, a few more times and this procedure ends up filtering down to the limited number of films that Hollywood produces in a year. So if you calculate it there is actually 121.000 to 1 chance of you getting that script made into a film. Hollywood is a nightmare, on the other hand it is one of the few reliable avenues of making money out of filmmaking these days. I don't actually know how Bollywood or Nollywood work but I would imagine it works under the same principles.” (Hugh H., interview, October 21, 2010).

Filmmakers notice that what happens in the large studios is that more and more interest is concentrated on the big budget films that have very large marketing push behind them and that are going to generate a significant amount of revenues. In the middle ground though they are losing out, because as Hugh points out:

“It has become very difficult to make any money within the traditional distribution system of films that have a budget of less than 8 million dollars.” (Hugh H., interview, October 21, 2010).

With regards to the economic profits of the major industry, participants point out that despite the laments over the effects of piracy, the overall financial robustness of the filmmaking industry and its related sectors is glaringly evident. Mike is a young filmmaker, blogger and new technologies enthusiast,

who asserts that there are still large audiences that go to the cinema regularly and that the people in charge of the major studios are well aware of this fact. He comments:

“I recently read online how the CEO of one of these major studios, it was probably Dream Works I think, well, he just openly admitted that the industry is actually “recession-resistant”, if not “recession-proof”. There are not many industries that can make that claim, you know? Especially now when the financial crisis is affecting everyone in one way or another... So to say that piracy is killing the film industry or the music industry or whatever it’s just, it’s completely bogus. I mean it was the MPAA that admitted that box office revenues worldwide have increased by 25% from, I think it was from 2006 to 2010.” (Mike M., interview, April 12, 2012).

In the same spirit, John believes that Hollywood majors have established a very stable business model paradigm:

“Hollywood gets about three quarters of the world film revenues, the same percentage it used to have in the 1920s and it still pretty much manages to maintain it. There is likely more money going into marketing than the actual production of a film, this is how they manage to make some of their films profitable. They are still losing money from the majority of the films but the ones that do make it and become blockbusters are enough to keep the industry healthy and strong.” (John B., interview, May 16, 2012).

Participants seem to be well informed on the facts and figures of the industry even when they do not consider themselves as part of this industry but mostly as outsiders. They nevertheless feel that the lobbying efforts and suggested policies of the mainstream industry have a ripple effect on the practices and ventures of independent filmmakers. I should also draw attention to how many of the participants seemed to have researched the various topics we would discuss prior to the interview. When I started contacting the potential participants for this research project, along with basic information on what my research was about, I forwarded them the main themes that the interview was going to explore. Participants did not know the specific questions, partly because as the interviews were semi-structured the precise questions were generated based on the respondents previous answers and the themes they

touched upon. Nevertheless, they were aware that I was interested in discussing their views with regards to the mainstream film industry, as this was one of the main themes on the interview guide. They had therefore time to prepare and research their answers, and there were many occasions when they would bring up their “notes” to back up their opinions and use their mobile phones or laptops to show me information online. In a few cases they had even printed out documents, which they gave to me and that they felt give more validity to their opinions. Such intense involvement and enthusiasm demonstrate how strongly they felt about the issues under question.

**Perceptions on Independent Film Production:** An independent film on the other hand, is a film that is produced and distributed outside of the major film studio system by either totally independent film companies or by subsidiaries of the six major film studios. While the vast majority of films that are produced each year are independent productions, independent filmmakers find it extremely hard to have their films distributed outside of their home countries as the global distribution deals are structured around the major film industry and pose great barriers to independents that want to compete within this circuit. Finn is another Edinburgh based filmmaker and a frequent participant in the “Shooters in the Pub” meetings. He explains how the strategies adopted by the major studios marginalise even more independent filmmaking:

“We are talking about a system that has been in place for what, nine decades at least, and it has evolved by and for the major film studios. The whole industry structure and everything around it, its marketing, branding, you name it, is there to support the majors and to create barriers for the independent companies... Independent filmmaking faces obstacles in all four key industry sections: financing, production, distribution and exhibition”. (Finn H., interview, November 22, 2012).

Major studios dominance remained unchallenged both from international competition and from independent feature production, leading to the development of massive economies of scale that make it nearly impossible for new players to compete with. Finn continues:

“Even when an independent film gets a theatrical release it is only screened for a week or so. Since they [independent productions] don’t have any substantial budget for promotion and marketing it is impossible to find the same commercial success as Hollywood blockbusters, so of course it is not profitable for theatres to keep them running.” (Finn H., interview, November 22, 2012).

So on the one hand the extremely large, and ever expanding budgets for Hollywood film production and marketing squeezes out the available resources for independents; while on the other hand exhibitors are much less willing to take the risk of empty cinema rooms which may very well be the outcome of projecting small, independent productions that have not been sufficiently advertised and marketed.

Nevertheless, there are endemic problems within the independent film industry, beyond those created by Hollywood’s monopolistic practices. Filmmaking is often seen as a harsh, competitive and highly uncertain employment. John notes:

“It is very tough and it can even become very, very disappointing, especially when you see other filmmakers, your peers, that you have worked with or just, you know, know their work and you admire what they’ve done and you see them having to quit because simply they can not make ends meet. It is not just a very competitive industry, it is also a very closed industry, even hermetically closed if you are a new filmmaker just starting out.” (John B., interview, May 16, 2012).

Finn echoes very similar concerns when he recounts:

“In the beginning you’ll most probably be working for somebody else’s project, doing commercials or whatever other paying job you find. You’d be working long and antisocial hours, isolated from your colleagues and possibly end up feeling marginalised before you even begin.” (Finn H., interview, November 22, 2012).

Precariousness, marginalisation, financial risks and extreme competition do not paint an ideal picture for aspiring new filmmakers but although they recognise these risks they are more than willing to take them, not because they are betting on a chance to become established and well respected filmmakers, but as they have all expressed in many different ways, because filmmaking and storytelling

is something they are passionate about and would not forgive themselves had they not taken these risks.

When it comes to independent film production, financial investment is not guaranteed as opposed to major studio productions. Independent filmmakers have the option to secure capital from various sources such as: public grants, television companies and foreign and private investment. So for “a young filmmaker with a dream”, as Hugh describes, the first thing to do is to manage to secure some financial support or invest their own money as nowadays it is possible to make a film on a very low budget. Hugh explains how this whole process works in the independent film industry:

“Filmmakers of course also need to invest their time and on average they may spend 2-3 years on a film. When their film is ready they need to submit it to film festivals and if they manage to have it accepted to one of the big film festivals, like Sundance, then they have a chance that a distributor will take notice of it. If the distributor is interested they will try to put it out to all of the various territories and if it manages to do well in the box office, which is something very hard for independent films without substantial marketing budgets, then the filmmaker will start seeing some returns that will still probably not cover their initial investment.” (Hugh H., interview, October 21, 2010).

Hugh, like most of the participants, is not at all optimistic about the prospects of managing to produce and distribute a film within the established independent film circuit. He concludes:

“Basically the rule is if you're a filmmaker you'll probably not make any money unless you're very, very savvy... The whole process goes: filmmaker, festival, sales agent, distributor, cinema and at some point during that process all the money goes away. Most independent filmmakers who are not very, very savvy are penniless” (Hugh H., interview, October 21, 2010).

One of the ways that independent filmmakers don't go broke is securing grants and funding from public organisations. According to Hugh, the problem with that idea is that:

"It invariably descends to the fact that any film that is going to get funded, someone will have to subsequently be able to justify that decision to a minister why did they give money to this." (Hugh H., interview, October 21, 2010)

So public funding usually goes to culturally worthy and artistic films that can make a good case in justifying their creation, while box office revenues is not a factor that influences this process. Marcy also holds very similar opinions:

"It [Public funding] goes to artistic films, it goes to stuff where you can subsequently justify giving money to, which is not the same thing as giving money to films that will subsequently make money or that have simply an entertainment value. If you have a sort of, you know, greater cause, social, artistic or whatnot, maybe then you stand a chance." (Marcy G., interview, November 4, 2011).

For Hugh this means that:

"99% of the films that I like and that I've made would not have got any money. I have got money, state funding in the past and I did not like it... you have to spend a lot of time justifying your decisions, you have to do a lot of paperwork, the process itself... takes a lot of time... it can take up to five years. There are a hell of a lot of people competing for very small amounts of money, you're competing on very unclear grounds, you are basically trying to prove that your film is more arty than the other guys and there's a lot of nepotism...I've done it once... but I would not do it again. It's essentially the Hollywood model without the big money at the end of it." (Hugh H., interview, October 21, 2010).

Participants unanimously agree that there are several industry barriers both within the major studio system and in the independent studio arrangements. Securing funding to make your film as a young independent filmmaker is both a time consuming and uncertain process that often leads to a dead end. So in contrast with popular discourse of digital technologies empowering the small independent creators, it appears that the independent filmmaking industry is actually facing equally important, if not more grave challenges than the mainstream Hollywood film industry. Uncertainty, complexity, feeling alienated and marginalised are common threads through all our discussions and this is what leads independent filmmakers to opt for a different way of doing things. The third option for the participants is following the web route. Hugh explains:

“At the moment nobody knows how the industry works including the film industry itself but broadly speaking there are the 2 basic models at the moment. I opted for the web route and although no one really knows how that works either... but what happens there is that you give the finger to the middlemen, the studios, the distributors, to the lot and you get to do your thing, you distribute it yourself and get money directly from the brand.” (Hugh H., interview, October 21, 2010).

So participants found a way to “hack” the filmmaking business and circumvent both national film funding agencies and major studios intermediaries. Mike explains:

“This, going it your own way, was unimaginable, say ten years ago. Now there are tools and platforms that allow you to produce and edit a film on your laptop, and there is social networking, crowdfunding, production suites for online collaborations... Filmmakers can finally be in charge for a change. And all these tools cost next to nothing to use.” (Mike M., interview, April 12, 2012).

While some of the participants acknowledge that industry intermediaries were necessary when making and distributing a film required a very significant financial investment, they also agreed that they had become far too powerful. But what is more relevant in this case is that most of the industry intermediaries are by now regarded as redundant for a new generation of digital filmmakers.

The internet and digital technologies are at the centre of these fundamental changes that all content industries are facing right now. New models are emerging in all three major aspects of filmmaking, offering novel alternatives for financing, producing and distributing independent films. Hollywood’s dominance is based on a system built in the pre-digital era and designed to control and manipulate the entire value chain and economics of films. In such a system costs are high and they are related to tangible expenses such as buying the actual medium (film), developing it, transporting it, storing and preserving it (Finney 2010). But digital filmmaking renders these considerations redundant and instead gives a head start to creators willing to experiment with new ways



of film production and distribution while significantly lowering the costs involved in these processes.

## 4.3 The Web Route

### 4.3.1 The Emergence of No Budget, DIY, Independent Filmmaking

Working on the fringes of the independent industry, DIY, No-Budget filmmaking is characterised by a lack of funding from both major studios and private investors. Since they are made with very little or no money at all, in such films the cast and crew are minimal, they work as volunteers, often having more than one job or role to perform and without an expectation of being remunerated. Cast and crew often agree to work under such conditions out of a sense of collegiality and reciprocity, as they are often in the starting stages of their own career and depend upon each other to assist in completing their projects. Often friends and relatives of the filmmaker are recruited to help out in the production fulfilling many different and varied needs whenever they arise. Kayle is a young filmmaker and game developer based outside of Edinburgh. He recounts his experiences of making a short, no-budget film:

“It was all hands on deck. At least all hands that I could find [laughs]... Even my mom was involved, I gave her the honorary title of costume manager. The thing is, you can recruit friends, other filmmakers, people you went to uni with, anyone interested basically. But then you have to work around their availability and that’s when things can go sour. These people also have day jobs, they can’t be available when you want, not all of them. But there is a silver lining too. You get to work with people who actually care for your film, they don’t see it as just a money grabbing opportunity.” (Kayle N., interview, December 12, 2011).

The filmmaker in no budget productions is of course the director but he can often be also the camera operator, editor, actor and also provide the basic level of financing that is needed for the fulfilment of the project. Such films are therefore very personal and are often meant to showcase the expertise and talent of the filmmaker. Kayle, perceptively compares this experience to writing a PhD, in order to make me understand exactly what he is talking about:

“It’s the same for you right? At least that’s what I’ve heard [laughs]. Doing a PhD is tough, you have to figure things out by yourself and for yourself. But you do get to do your thing, and it can be frustrating and solitary but at the end you’re proud of your work, this thing you’ve

created. Same here. You get to make your film without having a producer telling you “that’s not commercial enough”, “people don’t want to see this sort of things” so on... It’s this sort of freedom that you just can’t have when you answer to managers and the like”. (Kayle N., interview, December 12, 2011).

No-budget films are also predominately non profit as they stand outside of the independent film value chain and are largely ignored by the established independent film industry. My interviews with the participants were very friendly and informal. When shifting our discussion focus to their business models, strategies and sources of income, I would simply ask: “So how do you actually make money from your films?” It was revealing to see their reactions to this question, which I assumed to be a straightforward one. Gary’s reply summarises their responses very accurately and concisely:

“Low-budget, indy filmmakers want to make a living, not a fortune” (Gary W., interview, June 8, 2012).

So independent filmmakers are not particularly profit driven and they don’t depend on the conventional independent filmmaking value chain to finance or monetise their films. Digital technology has greatly assisted to counteract this lack of funding. Gary explains:

“Digital cameras, editing software, social networking, crowdsourcing platforms, you know how this goes, right? All these tools are immensely helpful. They let you make ultra low budget movies without wasting time searching for financiers or distribution deals... The cost is so much lower, you can take more risks, be more daring, if it doesn’t work out, start all over again. This is how it should be, this is how you hone your craft.” (Gary W., interview, June 8, 2012).

Digital technologies are at the heart of no-budget, DIY filmmaking and filmmakers utilise them as a means to overcome the limits of their budgets both for producing their films but also for marketing and distributing them.

Naturally when there are no funds available, filmmakers have to make do with whatever resources they have at hand, mainly through self-financing, and adjust their creative ideas to fit with the available resources while working around

obstacles that may appear. But amongst the research participants, all the filmmakers involved in open content filmmaking as well as many of those independent filmmakers trying to make it in the established independent filmmaking industry, agreed that it is very rewarding and empowering to retain all creative control and independence even at the cost of having limited budgets and having to overcome the problems that come with such limited resources. Kayle explains:

“When there is a major investor, they want to be in charge of the final cut... You can end up with a distorted or tamed version, you don’t even recognise as your own. Why do you think there are so many director’s cut re-releases?” (Kayle N., interview, December 12, 2011).

Young filmmakers who see their no budget films as an exercise in practising their skills and building their portfolios opt to retain complete creative control over all aspects of filmmaking. They are “betting on authenticity” as Marcy mentions and they are not willing to make any compromises in content, distribution, marketing or even exhibition. While it is certain that they will have to make some compromises out of necessity and lack of funding, these are actually regarded as opportunities to demonstrate their ingenuity in overcoming problems in the process of filmmaking.

All of the participants made strong connections and associated filmmaking with experimentation through and exploration of the capabilities that digital technology offered them. Such capabilities were identified both in the ease and lower cost of creation through the use of digital technologies and the ease of dissemination, marketing and exhibition. Marcy mentions:

“It’s just the nature of the medium, I think. Digital films invite you to play around, try out new things, be more daring. And it doesn’t stop with production. You have myriad ways to reach people online and get them interested. Even if you don’t get it right the first time, it’s no bother. You try something different until you get where you want.” (Marcy G., interview, November 4, 2011).

But even beyond these ever-present affordances of digital technologies, participants expressed intense interest in being themselves digital innovators

beyond the strict filmmaking realm by designing digital tools and platforms meant to facilitate and transform how other filmmakers produce and distribute their work. Indeed all of the participants interviewed for this study, with only two exceptions, were involved in projects related to online production or distribution platforms.

We can therefore observe that no-budget filmmakers see themselves as a distinctly separate group of filmmakers that do not identify with either the mainstream or the independent film industry structure, at least in their conventional form. What sets them apart is not so much what they do, but how they do it. The well-established structure, organisation and roles of the filmmaking industry are replaced by more fluid arrangements and non-hierarchical structures. They place great emphasis in artistic freedom, authenticity and independence from control by producers and investors. Interestingly they often adopt practices and strategies from the IT technology sector and as they are very well versed in digital technologies and how to use them in their advantage, they manage to devise ways of creating revenue streams outside the traditional value chain, and through free online distribution of their films or else they use these films as means to gain reputation and build a community for their brand.

#### **4.3.2 Breaking the Rules of Conventional Filmmaking Structure and Stages: Towards More Fluid and Unstructured Filmmaking**

In the Hollywood studio system and even in the established independent industry, the distributor is the one who invests in the production of a film. So they are the ones who select, determine and green-light the films that will be produced, they are the gatekeepers (Finney 2010). Since they are the ones that shoulder the financial risk they are also the ones who reap the majority of the financial benefits if the film proves to be successful. Participants were overall critical of how much control laid in the hands of these gatekeepers, but even the ones that were deeply involved with online activism and anti-copyright advocacy, acknowledged that there was a genuine need for such gatekeepers

and their investments in cultural production. But of course this statement holds true for the state of affairs before the arrival of digital technologies, the internet and web 2.0 tools, platforms and functionalities. Hugh explains:

“Fair enough, it makes sense if you think how high the costs are in these industries both for producing and for marketing. Plus 80% of the films that are approved don’t have any box office success. They have to keep their business going with the remaining 20% of the films, but trust me that’s enough [laughs]. So it’s this combination of financial risk and high costs that have made distributors so powerful as gatekeepers. Their resources were necessary but not any more. Now we have the tools to make a film at a fragment of the cost of Hollywood budgets and we have the means to connect directly with our audience. That’s a game changer.” (Hugh H., interview, October 21, 2010).

These rearrangements have the potential to transform the structure and value chain of both independent and major filmmaking industry. They also seem to give an advantage to individuals and small flexible teams that can perceive these changes faster and adjust to them more easily than the well established, vertically organised and complex corporations of the mainstream industry.

Filmmaking, both within the major studio system and within the established independent pathway, is a process that involves many discrete stages from the initial story or idea to the film release and exhibition (Kerrigan 2010). Filmmaking in general, has a very strong collaborative component as there are different roles demanding different expertise and various responsibilities to be fulfilled during film production and distribution. It is not uncommon, especially for independent or early-stage filmmakers, to assume themselves many different roles during the process of filmmaking, such as screen writing, directing, producing, editing and even distributing their films. The time it takes to complete a film varies widely depending on the budget, the scope and the availability of the necessary skills and tools, so it can take from a few months to many years. Joshua is an independent filmmaker based in London. We met during the “Power to the Pixel” conference in October 2012 where we had the opportunity to discuss his views on the structure of the industry. Joshua had a chance to be involved in a British independent production that was funded and

produced through the established routes of the independent industry and had a considerable budget at least for an independent production. He was working as a camera technician but his aim was to be “involved in as many aspects of the production as possible” because he regarded it as an exceptional learning opportunity. He describes how the whole process can be broken down into two broad phases, involving different processes and having different goals: Production and Distribution. This segmentation varied between respondents’ narratives. Many included exhibition as a separate third phase that mainly applied to the independent and mainstream studio industries, since for creators who select the web route approach, distribution and exhibition are concurrent. Furthermore, other participants considered the project’s initial development to be separate from production and there were many small differences in which subsequent stages formed part of the two or three main phases of filmmaking. While such subtle phrasing variations may seem inconsequential for the actual practice of filmmaking, they nevertheless signify a departure from the conceptualisation of filmmaking as a process of well-defined, pre-planned stages and an increasing focus by the filmmakers in understanding their craft by practising it.

We can however attempt to paint a picture that would serve as a rough guide of the different phases and stages involved in filmmaking. Joshua explains:

“So the production phase has five major elements. You have story development where you come up with some solid ideas for the film, write the screenplay and make a budget assessment and propose different financing channels. Then you have to actually negotiate and secure the finances. And this can take much longer than it does to develop the film idea. I’ve heard of many projects that freeze during this phase. Now if you get through it you have pre-production, where you make all the preparations and get ready for the shooting. So you find the locations, build the set, hire the cast and crew, this sort of things. And you’re ready to go into production. And when you finish shooting you go into post-production where you can edit the images, add visual effects, sound, music and the like.” (Joshua C., interview, October 19, 2012).

After the production of a film is over and there is not already a deal with a distributor as in the case of the major studio industry, the filmmaker needs to

find a distributor willing to promote and show the film to the public. It is through the circuit of film festivals that a distribution deal is usually struck but if a filmmaker fails to reach a deal with a distributor their work may never actually reach the public, even if the film is completed. In such cases the only alternative route filmmakers have nowadays is to take advantage of the internet as a distribution tool and distribute their work themselves online.

Joshua also explains the various important roles that are assigned to different individuals during film production. He points out that a film **producer** is responsible for the smooth functioning and cooperation between all aspects of filmmaking. He should therefore be involved in all phases and stages of filmmaking, supervising different operations and creating the right conditions to make the film. The **executive producer** is mainly related to financing matters so he is in control of the budget and all the partial issues connected to the film budget, such as overheads, location permissions and related matters. What is more, the executive producer is also the highest paid person in the filmmaking process. The **director** is the main authority when it comes to creative and aesthetic issues. He instructs the actors, chooses the artistic look of the film, he is in control of lights, effects and similar issues. The **production manager** is responsible for the tangible assets of the film. He is responsible for matters related to production technology, the timeline and planning for the shooting as well as hiring staff depending on the expertise needed for the film. His principle assistant is called the **production coordinator**, while he follows the instructions of the **line producer**. The **first assistant director** is there to assist either the production manager or the director. His main job is to make sure that the film keeps to its predefined timetable and that everyone knows exactly what they should be doing and that they are doing it effectively. Joshua even had a handy diagram where these main roles and responsibilities were described based on his experience, along with a few other secondary positions and tasks. Nevertheless, he acknowledged that in no budget productions and in more innovative web oriented projects, such compartmentalisation was not possible or even desirable.



James is a filmmaker with a background and studies in Digital Film Production. He explains that what is widely regarded as the structure of film production is a rather linear simplification of a more complex and messy story. According to the mainstream understanding, the hierarchy of roles and responsibilities goes:

“...from the executive producer who is at the top, to the producer and then to the director who is third in line and just above the heads of departments of sound, photography, design and editing.” (James F., interview, October 14, 2012).

The people in the higher places of the hierarchy can delegate part of their responsibilities to people in a lower position. James believes that the director and producer of a film should be in the centre of the process not on the top, surrounded by the crew, and that the vertical routes of communication should be replaced with horizontal collaboration. He still believes however that there should be some order and priority during the filmmaking process and that greater emphasis should be placed in the opinions of those in the centre of the structure, the director and producer. As filmmaking operates quite flexibly, the attempts to sketch out a fixed structure does not illuminate how the creative process work but in contrast they can hold back creators from thinking things differently and thus missing out on new opportunities. He remarks:

“When you work in the industry or even while you’re in film school you learn about how the industry works through established models... You often hear how you must start at the bottom and you have to work your way up. Why don’t we try to think about it differently? Try to conceptualise more flexible arrangements, teamwork based on parity. Perhaps we’ll come up with different models that hold more opportunities for filmmakers.” (James F., interview, October 14, 2012).

Jon is an independent filmmaker, photographer and web developer. He also regards with distrust organisational structure charts that aim to sketch the process of filmmaking as a well-defined activity with clear-cut phases. He explains how indeed there are different departments involved in the production of a film but they should all work harmoniously as a whole while completing their separate but interconnected tasks. But even these tasks and each department's specified domains are negotiable and not set in stone. This is

especially true for independent productions. Different creators have different ways of getting their work done and every film has a different organisational structure. He explains:

“I know of independent filmmakers whose model is to come up with a script and maybe even a cast and crew, and in some occasions even go ahead and make the film before they start looking for an executive producer [this is often regarded as one of the first steps], whose advice they may follow or not. It makes sense for them as they regard the film's distribution as the only real business aspect of filmmaking.” (Jon C., interview, September 28, 2011).

He suggests that we should think of independent producers as patrons that seek to fund artists with no expectation of a financial return.

With regards to distribution, participants often mention the shrinking of the release system based on windows, as a representative example of the changes in the industry. The complex system of connected release windows is adopted by both Hollywood and independent industry and is meant to attract different audiences and at different prices. So we first have the theatrical release at the cinemas, after a few months the film goes to the DVD market where the biggest profits are actually made, and from then on to subscription television and finally free television (Acheson & Maule 2005). So film is only one part of the audio-visual industry, which also includes television, video rentals and online video, which is the hardest to define as it is the most heterogeneous in terms of form, format and style. Although dealing with the same type of creative output, that is audio-visual media, these sectors remain relatively separate and would perhaps be better understood as a type of market segmentation. Joshua explains:

“The same film could go through all these different markets but you can also have films that go straight to the video market or they're made specifically for TV... Different market categories have different sizes of production budgets. On the top you have films made for theatrical release.” (Joshua C., interview, October 19, 2012).

It follows then that television shows have smaller budgets than feature films and online video even smaller budgets than television shows. They also have

different business models since films rely on ticket sales, while television shows rely mostly on advertising. This is though a very clean and simplified version of the current landscape with regards to audio-visual works, as there is obviously a lot of crossover between them, with television shows being re-written as films, films being broadcasted on television and of course all forms of video eventually ending up online.

Nevertheless, it is interesting to note that the common perceptions of a film's artistic value and merits also follow this formulaic market segmentation. So a film that achieves theatrical distribution is widely considered as more accomplished compared to a straight to video film or a television series. However, the participants of this research are set to break this prejudice as well. Being no-budget independent filmmakers who are often involved in open content film projects, their films are meant to be released directly online. But they state that they make no compromises when it comes to artistic quality and vision. They suggest it is now timely that we change our perceptions of the value of a film that corresponds straightforwardly to the different stages of the distribution value chain. Digital technologies provide inexpensive tools such as cameras and editing software, which are able to make expensive looking films and thus as Timo puts it: "jump up the value chain" (Timo V., interview, July 13, 2011). Timo is a Finnish filmmaker who has released a number of open content, no budget films and despite the fact that the films were available online for free, he subsequently managed to sell distribution rights to television networks and subscription based television services. He asserts that when taking the web route:

"The time and processes related to what is considered to be mainstream workflow in production and distribution become redundant. There is no gap anymore between producing a work and distributing it. Of course there are other concerns in this case. You don't have to worry about distribution deals but you still need to find and engage your audience." (Timo V., interview, July 13, 2011).

Filmmakers who choose to take the web route are not simply outsiders with regards to traditional value chain and the sequenced distribution windows of

the film industry. They are also challenging widespread conceptions that equate established distribution strategies with perceptions of quality and aesthetic superiority in audio-visual media.

#### **4.3.3 Genres and Hybrid Forms of Creation for Connected Digital Filmmakers**

Within this new environment for production and distribution of audio-visual works, novel forms of creation start to appear which do not fall into any of the mainstream industry's categories. And it is often on the fringes of the mainstream industry that both technological and artistic innovation takes place. Creators begin to re-imagine and re-invent cinematic storytelling by taking advantage of digital technology's affordances and they consequently re-accommodate their creations into the digital realm. New genres and filmmaking formats start to appear which definitely do not adhere to the strict definition of a feature film. Finn explains:

“I started trying out how it is to tell stories across different media about three or four years ago. So I’m using film, television, games, anything that could fit into this fictional universe. A story can be anywhere, and the challenge is how do we go about with building these really kind of interesting worlds, and how can we let people kind of immerse themselves in it... The internet is a creative tool, it was something that could extend the story that I wanted to tell and I brought it into the process of making a film.” (Finn H., interview, November 22, 2012).

Digital technology and media are themselves much more flexible and capable of being adjusted to the filmmakers’ purposes than traditional, mass media. They allow for new and innovative ideas to come to fruition and for experimental creation to unfold as they entail very low costs for creators. Given such low costs they are conducive to intense experimentation across different platforms, genres and forms. Filmmaking of this sort appears to depend equally on creativity as it does on technology. Hugh explains:

“Digitisation and internet based communication let us work on the same project from distant locations. And they allow us to stay in touch and ask for advice from like minded creators. So you have this extensive network where you exchange knowledge, resources, suggestions and this also has

an effect on the type of films you're making. They become more innovative, more experimental, more global even." (Hugh H., interview, October 21, 2010).

Filmmakers often comment how their films are shaped by the availability of digital technology tools and amongst these tools Creative Commons licenses feature prominently for open content creators.

The filmmakers that were interviewed for this research often identified themselves as "experience designers", "machinimists", "interactive storytellers", "digital storytellers" or "filmmakers". They also mention that for their practice, they cannot really differentiate between film, video and digital media these days, so they need to describe themselves in ways that departs from the traditional confines of what it means to be a filmmaker. When they were asked to describe how they regarded the type of filmmaking they were involved with, participants used a variety of terms and neologisms. The variety and novelty of the terms can be perceived as a tangible example of the weight they put on standing out of the mainstream and appearing to be doing something different and unique. Participants were therefore involved in "underground cinema", "DIY cinema", "microcinema", "extreme cinema", "cinema against the grain", "crossmedia", "meta-filmmaking", "guerrilla filmmaking", aiming for a "post-cinematic" experience, making "micro-budget" films, "cult", "experimental" and "no wave" films. Some of these terms refer to more specific practices within or in some cases even beyond the no-budget filmmaking arena. So **underground cinema** is a general term that signifies a film that is out of the mainstream, established ways of filmmaking with regards to style, genre or financing. With regards to **crossmedia**, Finn claims that what sets this practice apart from traditional filmmaking is that crossmedia take advantage of many different platforms, media and devices in order to tell a story. These techniques aim to provide a more rich user experience where audiences feel in control and important:

"In this case... you are not really the narrator, you are a facilitator. You provide a background, the context if you like and you let the audience experience or author their own story. They choose their entry points,

how to progress, what to add or subtract, everything is meant to be flexible.” (Finn H., interview, November 22, 2012).

**Guerrilla filmmaking** refers to a common no-budget strategy where the filmmaker decides to shoot on location without first obtaining permission from the owner of the premises. Marcy explains why she chose this technique for her short film:

“I wanted this film to have an authentic feeling, a sort of documentary aesthetic to it, you know what I mean? So no, it wasn’t a pragmatic decision, or it wasn’t just the practical, convenient aspect that I considered. I wanted, I needed to capture the sort of dynamism that guerrilla filmmaking allows. Fast, dense shots with no warnings and no chance for a second take.” (Marcy G., interview, November 4, 2011).

Hugh explains that the word **machinima** comes from the combination of the words “machine” and “cinema” and refers to the use of real time 3D computer graphics rendering engines to create a cinematic production. He continues:

“You can use a game engine as a way of doing puppetry, it can be based on a game or on something like 'Second Life' or on some of the machinima programmes like MovieStorm but essentially it's all puppetry with computers.” (Hugh H., interview, October 21, 2010).

In 2005 Hugh H. sold the url (domain name) “machinima.com” or the “brand” as he calls it, for an undisclosed amount. So while many of the terms that filmmakers use to describe their craft have a commonly accepted significance in the domain of their creative endeavours, quite a lot of their terminology is as a matter of fact, newly coined. Using such avant-garde terms not only reinforces the uniqueness of their projects but they are often part of their brand, or literally the adapted version of the name for their team, project or online service. Being memorable is therefore an efficient step towards building their audience.

In addition to participating in conferences, workshops and informal meetings with filmmakers, I conducted 31 semi-structured interviews with independent, low budget filmmakers. Amongst these 31 projects that were discussed, 9 of them were documentaries and 14 were science fiction feature or short films.

Even beyond the semi-structured interviews, my participation in filmmaking related events also confirmed that the overwhelming majority of open content and web oriented films gravitated around those two genres of documentary and science fiction. While many of them indeed departure from the established norms of these genres with regards to style and format, there is a great deal of overrepresentation of documentaries and science fiction films in the open content, digital films community. When I brought this subject up during my interview with Paul, he commented:

“That’s geek culture isn’t it? Films made for the internet audience and made with the help of the internet and digital technologies, by new technology enthusiasts, it’s only natural that they’d deal with subjects that internet communities are fascinated with from the very beginning.” (Paul T., interview, August 12, 2012).

Nevertheless, such concentration around these two genres possibly signifies something beyond a simple fascination with cyber-culture. Both documentaries and science fiction deal with subjects that certain segments of the audience can feel very strongly about and therefore they can be easily mobilised in promoting and supporting such films. It could actually be that the ease of gathering up a community around such projects is one of the factors that galvanise the production of science fiction and documentary films.

It appears that knowing your audience and acknowledging what type or format of media they want to consume and how, is an essential preoccupation for web oriented no-budget filmmakers. Anne is a filmmaker based in London involved both in media archiving and filmmaking especially related to local communities. I ask her to describe the type of projects that she is involved in:

“You can call it a hybrid genre. It borrows elements from documentary filmmaking, journalism, serialised TV. I’m not sure this description does it justice [laughs]. It basically allows people to share aspects of their lives, their local communities’ lives, any issues they want to address... All this genres that don’t fall neatly in the pre-established categories struggle to find a durable business model that will sustain them in the future. And these struggles give birth to new ideas and experimentation

with both genres and business models.” (Anne H., interview, December 10, 2012).

She argues that observing how these models evolve will help us understand how content industries and culture will be organised in the future. One of the key aspects is to understand how the audiences’ media consumption practices change and what their attention span is for the type of media they are after. Filmmakers would be wise to follow such insights from their audience and provide offerings that fit these new consumption practices. She adds:

“The internet is not only changing the ways films are made, it is changing the ways people approach and watch films”. (Anne H., interview, December 10, 2012).

Young independent filmmakers, who are mainly at the beginning of their careers, like the participants in this research, find that thinking outside of the mainstream industry’s conceptualisations of filmmaking can be liberating and empowering. Their new practices and approaches to cinematic storytelling often clash with what is considered as established modes of film production and distribution. Such incompatibility with the conventional structures of filmmaking lead them to further innovate and experiment with hybrid business models for their hybrid cinematic creations. Within this environment, Creative Commons licenses and their varying modalities appear to be closer and more fitting to the filmmakers’ practices. CC thus become the licensing counterpart to their convention-defying style of filmmaking practice, fulfilling a very real need for legal reconfiguration with regards to digital filmmaking and flexible distribution.



## **B. The Changing Landscape: Technology & Copyright In Independent Filmmaking**

### **4.4 Technology and Filmmaking**

Since its birth in the 1890s, cinema and filmmaking has been characterised and evolved through an on-going dialogue and constant interaction between technology and art (Salt 2009). The filmmaking industry has developed rapidly within these 120 years, in terms of technological, economic and social influence. The most current developments were enabled first by digital video technology and then by ICTs that led to a drop in the cost of film production and distribution, making it easier and less risky for small independent creators to experiment with various forms of filmmaking and build up their own distribution systems. Jon explains why for him digital technologies are so essential to his practice:

“Most importantly digital cameras and the internet have lowered the entry barriers to the film industry. Up until now the film distribution circuit was completely dominated by the major film studios that could easily block independents’ films. Now we can reach our audiences directly and give them access to our films through our websites or other dedicated sites, even through peer to peer.” (Jon C., interview, September 28, 2011).

James also believes that the introduction of digital technology in filmmaking:

“...alters the power dynamics in the industry, handing over control from the intermediaries and investors to the practitioners who no longer need their backing or approval.” (James F., interview, October 14, 2012).

Low budget independent filmmakers therefore invest more of their time in developing web related skills and methods to build their own recognisable brand and consequently find their audience.

Indeed filmmaking, more than any other art, is entirely dependent on technology. Unlike music or painting that have been with us for thousands of years, filmmaking appeared when the technology appeared. So the relationship

between the two is extremely dynamic and changes in technology open up possibilities for experimentation in art. Jon states:

“I am not 100% sure whether this is historically correct but I was thinking that filmmaking is probably the only form of art where creators cannot afford to source the material which are necessary for them to create their art. The internet and digital technologies like low cost digital video cameras have changed all this.”

Jamie is an independent filmmaker from London who is currently based in Berlin and he is deeply involved in the digital rights movement. He also brings up the strong relation between filmmaking and technology:

“My point is that filmmakers are fundamentally technologists... The early pioneer filmmakers were technologists and pirates as it is well known. So there is a lot of connection with the development of technologies of communication and filmmaking. It's only actually been three generation when we can actually think about filmmaking as a solid thing, disconnected from the tech... But if you want to be a filmmaker you need to remain a philosopher, to remain a hacker, remain somebody who is interested in the technology of what you do and what the ideology of this technology is, and all of the ways in which the medium is the message.” (Jamie K., interview, June 12, 2011).

So in the hands of independent filmmakers digital technologies appear to have great disruptive capabilities (Christensen 1997) with regards to the overall industry, while on the other hand, as we will see in more detail in section 4.4.3, viewed from the angle of the major studio industry, the internet and digital technology more generally seem more tame in their effects as they are basically being used to preserve major industry's market dominance.

#### **4.4.1 Digital Video Technology**

As William Gibson (1999) commented digital video is a new platform that is still wrapped in the discourse and mythology of an old platform, so we do still call movies “films” even when we are well aware that the days of celluloid are behind us. Celluloid film had indeed been for most of the history of cinema the only medium of cinematic storytelling, making the name of the medium synonymous to the name of the actual practice and art. It was only with the

arrival of digital technologies that a different medium is offered as a powerful alternative. Digital technology was, of course, being used in the industry during film production since the '80s so the process of integration of digital technology within filmmaking is rather smooth and continuous and does not involve an abrupt break with the past (Cunningham et al. 2010). Nevertheless, if we pay attention to the whole process of integration of digital technology within filmmaking we can discern the significant changes that have happened through this integration within the industry. The cost reduction, efficiency, speed and opportunities for creative experimentation that digital technologies can afford, have made actual celluloid film nearly obsolete and brought the means of film production to the hands of many independent filmmakers, as it is now possible to buy professional quality HD cameras and editing systems for less than £2,000, while such accessibility was impossible just a couple of decades ago. John explains how digital technology allows low budget filmmakers to shoot films that look and feel like they were made with professional quality equipment:

“In guerrilla, ultra low budget filmmaking you don’t really have the time, crew or equipment to do complex shots or to have the proper lighting. So I opted for shooting the film in a flexible way that would allow for major modifications during post-production. When we were going through this process, the raw footage really didn’t look like the sort of quality I was aiming for. It looked bland with dull colours and lacked this independent cinematic aesthetic that’s characteristic of this sort of films. But it turned out that the ordinary, flat look that I perceived as a weakness was, as a matter of fact, a huge advantage, cause it allowed us to experiment with colouring and adjust and manipulate the visual elements exactly as we saw fit. Using digital video allowed us huge flexibility and room for manoeuvre.” (John B., interview, May 16, 2012).

Digital video replaced analogue video formats that were of lower quality. John explains that the most common way of recording analogue video was in Hi8 or Video8 and the poor quality of both made them acceptable only for home videos. But digital video cameras made possible to record professional quality videos without the need for expensive and professional level equipment. Suddenly making films as a “hobby” or to promote a social or political cause

became a reality and a new generation of creators started experimenting with filmmaking and aspiring to reach wide audiences. By now it is acceptable to make a film in almost any format and use the internet as your distribution and marketing tool either through a video on demand service or even using peer to peer networks. Gary points out that it wasn't like this before the 1990's:

“If a film wanted to secure distribution it had to be in 35mm, anything else was more like a joke. This was the attitude of the entire industry not simply from the distributors. Even actors were reluctant to work for films made in anything else but 35mm.” (Gary W., interview, June 8, 2012).

The landscape seems very different now, as Gary continues to explain:

“16mm, 35mm, DV and HD are all tools perfectly valid to be used by filmmakers. The question is not which format is right or acceptable but which format is best for your project” (Gary W., interview, June 8, 2012).

Filmmakers need to know techniques related to film, video and digital media as these are not separate fields nowadays. Consequently creators need to be able to shift and move between different media depending upon the requirements of different projects.

#### **4.4.2 Changes in filmmaking brought by ICTs**

The most profound changes in the industry can be observed in the distribution sector where the extremely high costs of actually making multiple copies and shipping a film around the world is replaced with the near zero costs of instantaneous digital delivery over the internet. Internet distribution can therefore assist filmmakers to remove intermediaries from the value chain, providing them with more control and more revenues. So while digital video technology in the '80s and '90s brought the technology closer to the hands of the creators, it was increased bandwidth and web 2.0 technologies in the '00s that brought those films directly to a world wide audience. All of the filmmakers interviewed for this research shared the belief that with regards to the availability and approachability of the necessary technology, there's never been a better time to be making video content. But what is even more important to

their eyes is that there has also been a very rapid increase of ways that audiences are able to find and engage with video content, so the demand is also increasing and diversifying along with the supply of such content. Mike explains:

“There is a constant need for online videos and there are so many different ways for people to watch films and videos. From home cinemas to internet streaming, there is video on demand, TV, it can be done on tablets or even smart phones. All these have created a very large demand for any possible type of film and of any imaginable duration.” (Mike M., interview, April 12, 2012).

Filmmakers take advantage of new technologies and take notice of the audience's new patterns of consumption. They are adapting their films for such consumption patterns by departing from the conventional feature film that was the norm until now, experimenting with many different forms and creating widely varied output. So from traditional narratives to music videos, infomercials, machinima and interactive storytelling through video games, filmmaking is definitely changing. New technologies influence the creative form, its consumption and its production.

Amongst the different types of creative content that have migrated to the digital online environment, filmmaking presents a special case as it requires the most diverse types of expertise (such as screenwriting, design, cinematography, editing, music, direction, acting and so on) but it also provides a great opportunity to nurture relationships and collaborations between different creative communities by taking advantage of the new ICTs. Filmmaking had always been a collaborative process but ICTs spread such collaborations to geographically disperse communities of creators who may work on the same project without even having met each other face to face. Hugh describes that he regularly collaborates with people that he has only met online after becoming familiar with their work, again through its online availability:

“I was looking for music that I could use in *“Bloodspell”* and I really did not have a budget for any of these, so I was looking online for Creative Commons licensed music and honestly there was an amazing range of

options. So I contacted this songwriter, mostly as a courtesy, to let him know how I intended to use his music and he was actually very keen to even produce some original material just for the film. So yes, that was the beginning of a beautiful friendship [laughs]" (Hugh H., interview, October 21, 2010).

And when it comes to film distribution the influence of ICTs is even more pronounced. Hugh continues:

"It was inconceivably harder to distribute your film than it was to produce it. Film distribution has a huge infrastructure in place and it requires huge sums of money to feed it. You need factories to make copies of films, you need vehicles to transport them around the world, you need warehouses and retail shops. And let's not forget all the secondary functions that are needed to keep this system running. People like accountants, agents, lawyers... When the internet comes into the equation everything is turned on its head. Now a world wide audience can be reached with the push of a button." (Hugh H., interview, October 21, 2010).

Costs for producing all types of video content are falling, as video recording technology gets better and less expensive. It's also never been easier to distribute digital video content, since broadband connections are becoming more and more widely available, and the internet is cheaper for consumers to access than going to cinema theatres. Filmmakers of every kind should be able to benefit from the progress of technology. James paints an optimistic picture:

"When the cost of making videos or films is going down, filmmakers can make more films with less risks. They can make more varied, different films. They don't have to be of the same standards as Hollywood productions and that's ok. Amateur creators are also valuable if we cherish pluralism. And as they experiment with making more and more films and they get better at it, I don't see the reason why they couldn't eventually appeal also to large audiences. And through new digital platforms like kickstarter they can appeal to large audiences even before a film is made. They can get them involved as contributors or investors." (James F., interview, October 14, 2012).

Finally it should also be noted that independent filmmakers use digital technologies not only to produce and distribute their films but also to launch a variety of services targeted either to other filmmakers or the general audience. Such services include platforms that provide audiences with access to niche film

markets offering old and out of copyright films, short films, experimental films and so on. As this is a very marginal market, it actually provides very few opportunities for financial gains and when they do occur they are indirect gains linked to the establishment and promotion of the brand offering such fringe films and consequently helps the reputation of the creators involved with the service. Hugh explains that this is a type of move that only passionate independent creators could take:

“The major film studios have absolutely no motive to invest in providing the sort of services that the internet archive for example offers. As a matter of fact it would make sense for their part to try and suppress such attempts since the more options there are for people to choose from, the more their share of viewers gets smaller... But there is a large and growing demand for niche films and this is why you can see that there are strong and active communities willing to support the services in any way they can. They meet a true and strong demand. ” (Hugh H., interview, October 21, 2010).

#### **4.4.3 Digital Technology and the Major Industry**

Major studios, in contrast to independent filmmakers, appear to be much more reluctant to exploit and experiment with the offerings of new information technologies, favouring and lobbying instead for the protection of their already established business models. On the one hand with regards to film production, digital technology and its cost reduction effects are not applicable when it comes to big budget blockbusters. Digital technology offers an extensive range of special effects and techniques that are essential for major industry's films, especially when they're after a specific digital look and feel for their films, but given the extremely large budgets available for such films, the cost reduction stemming from the use of digital technology is either negligible or practically non-existent. On the other hand, with regards to distribution of films and the use of the internet, the position of the major studios is extremely defensive as most of the times they perceive the online environment as the realm of pirates, and instead of attempting to build supplementary distribution channels for their content, they regard the internet with distrust equating it with illegal

activities. Many participants mention Hollywood's reluctance to forego even a small part of their control over how films are distributed nowadays, and to them such close guarding and controlling over their IP seems absolutely counter-intuitive especially for digitised content. Mike believes that major studios' executives understand very well that there should be major changes and reconsiderations of the ways films are produced and distributed but they want to delay these changes for as long as possible since the current situation favours Hollywood:

"They would have to deal with a completely new sort of eco-system. But their position in the current mainstream landscape is already established; they are at the top of the food chain. The new landscape is a very complex one. And it is only going to get even more tricky and complicated. So you need to be able to innovate, experiment and be quick at it too. Adapt, you know. Well, it is difficult to adapt when you have a heavy bureaucratic mechanisms and out-dated modes of operation." (Mike M., interview, April 12, 2012).

Major studios are reluctant to change their established and so far very successful business models in order to take a risk, embrace and adapt to the digital realm. But as Kayle points out this has been the case for almost every new medium and new technology that at first appears to compete with their established practices:

"Hollywood had always been very defensive, if not outright hostile, when a new type of medium appeared. When TV first appeared in the '40s they just saw it as this great threat that would make people stop going to cinema theatres. In the beginning of the '80s they developed this new type of paranoia about home video and how it will be the death of cinema. Of course, less than 10 years later the home video market had become the most important source of income for the movie industry. And now it's the internet or peer to peer or what have you, playing the role of the bad guy, this new threat for, basically, the DVD sales market. And they come up with a whole new range of apocalyptic statements about the pirates' relentless onslaughts on cinema and culture. For anyone paying even the least bit of attention on the history of the relationship between the film industry and related technology... all this talk is predictable, monotonous and lacking any foresight or the ability to discern the opportunities that internet brings for filmmakers or artists in general." (Kayle N., interview, December 12, 2011).



It really appears that major studios in their reluctance to get involved with the internet and online distribution, they are missing out on the opportunity to minimise their distribution costs and to exploit older films that are part of their portfolios but no longer on offer through conventional DVD and video shops because of the limited number of products such shops can offer to their customers because of the physical constraints of the available space.

Nevertheless, Joshua points out that a few established, major studios slowly begin to dip their toe in the water of online distribution and digital openness by sharing not complete films but promotional clips, footage and short videos related to their films. The demand for video content is steadily on the increase and this fact did not go unnoticed by major studio's executives who are aware that watching videos and playing around with them through remix or parody has become one of the most popular activities online, especially for younger audiences who are Hollywood's major target group. By releasing short promotional clips, their stated aim is to engage with their audience in a more meaningful and personal manner, though the success of these attempts is debatable. Joshua explains:

"Their involvement with online video is really much less imaginative [compared to independent filmmakers], they basically extend the same conventional marketing strategies they've been using so far to the online world. They want to advertise, not create and sustain a relationship with their audience. So they build websites with trailers, release dates, you know, super stars' bios etc... They often have a presence on social media, mainly facebook, twitter not that much, trying to start viral campaigns based on what? Trailers that people are not even allowed to interact with, only forward them to their friends. Of course they have not succeeded." (Joshua C., interview, October 19, 2012).

So Hollywood's involvement with online video is not perceived to offer any qualitative difference to their usual marketing strategies. Their relationship with their audiences does not evolve into a dialogue but instead remains one-sided, lacking the conversational elements that make independent filmmakers' strategies intriguing and successful, therefore generating word of mouth and engaging their audience.

While Hollywood executives may be reluctant to initiate a qualitative change in their interaction with their audiences, they nevertheless start to understand that online does not necessarily equate to illegal and begin to explore ways to offer at least some their films through online services (Noam 2010). Indeed more and more films become available online, sometimes even simultaneously with their theatrical release, though of course not in the free and open fashion of independent filmmakers, but mainly through subscription services offering streaming video and video on demand. Such developments have interesting implications for Hollywood's established window release system. This vertical distribution system based on windows of exclusive release is steadily on the decline with windows becoming much shorter, as new technologies allow for more horizontal simultaneous release and consequently rendering some of the traditional gatekeepers redundant. Hugh like most of the participants agree that online distribution over the internet is the negation of the tightly controlled and formally structured window system of film release. He explains:

"Audiences across different countries become simultaneously aware of new releases of films and they are not willing to wait until films are scheduled to be released in their respective countries. They want immediate access and under their own terms, which means on their own devices and platforms without necessarily having to attend a cinema screening. If Hollywood is not willing to offer such a range of options, many pirate sites are more than ready to cater for these demands." (Hugh H., interview, October 21, 2010).

Joshua believes that Hollywood is paying attention to this trend and demands:

"I think it was partly because of the threat of digital piracy and how it affected the music industry that the major film studios were much quicker to adopt the video on demand model so that their customers would have a legal alternative if they wanted to obtain content online. That's why we see studios like Fox and Disney teaming up together to form an online outlet for their films... On top of that they can now also have a complete profile of their customers' preferences which can be used strategically to market future films or other products in a targeted manner, this is a very advantageous situation for them and one which they did not have the means to pursue before." (Joshua C., interview, October 19, 2012).

Indeed the majors had their try in online distribution relatively early on, when in 2001 they established Movielink and Moviebeam (Finney 2010). Joshua explains:

“Movielink basically included all 6 majors so you’d expect a great deal of demand for their products, but 5 years later, probably even less, they close down cause they had failed big time in establishing themselves online. After the failed experiment they knew better than to try and do it by themselves again so they teamed up with players that knew about making business online. You know, firms that were outside the film industry circuit but very much insiders in the IT industry: iTunes, Amazon, Netflix. Even for Hulu [Hulu is a joint venture by Disney and Fox, where through its website they offer streaming, free HD TV supported by ads] that’s the closest simulation to Movielink, it was basically designed and is ran by people from the IT industry who were not involved in the old way of doing things”. (Joshua C., interview, October 19, 2012).

Such digital distribution methods both for films and TV shows are only just starting to develop but they will most likely become much more widespread in the near future. Audiences demand more options and greater convenience and this demand pushes for the creation of innovative, direct-to-consumers services that in turn become valuable for both audiences and filmmakers.

The great majority of participants agreed that Hollywood managed to develop a very effective and successful system that has functioned effectively and played a major role for almost a century now and this is manifested by how the major film studio industry ended up dominating and almost considered synonymous to the film industry as a whole. But now change is in the air and the major studio industry faces the same challenges as all content industries through their transition to digital technologies. Hollywood majors start to adapt, admittedly much slower than their independent counterparts, changing their strategic dynamics with regards to the release and marketing of their films. For this reason they pair up with online giants such as iTunes, Amazon and more recently Netflix, to provide digital distribution of their films through video on demand over the internet (Cunningham et al. 2010). Digital technologies are praised by independent filmmakers as they enable them to complete projects

that it was impossible to do before. But the major studio industry is, slowly perhaps but steadily, catching up with digital tools and distribution methods which could allow them to establish the same dominance in the digital market as they have in the traditional film market. It will therefore be very interesting to observe how these dynamics will evolve in the near future and how the new digital cinema landscape will be shaped.

## **4.5 Copyright and Independent Filmmakers**

One recurring theme through this research is filmmakers' belief in the inability of copyright to protect creators' financial interests and its inefficiency as a legal tool in the digital domain. Participants often characterise the mainstream industry's stance as hypocritical, since while guarding closely their own Intellectual Property, they simultaneously rely on the public domain as a stable resource for their films. What is more, up to different extends, all of the participants believe that copying per se cannot be controlled or prevented in the digital domain, nor is it desirable to attempt to closely control it. Copyright certainly is not regarded as a useful tool not even for creators that want to limit access to their work, as it is widely considered to be unenforceable by independent filmmakers or by anyone who cannot afford the cost of lengthy litigation. Given that the hybrid creations of independent filmmakers often challenge mainstream definitions of what a film is, by including conversational elements and the possibility for further modifications which are not present in the mainstream industry, copyright does not simply fail to protect independent creators, it appears that it outright fails to acknowledge the creative activities of filmmakers as such. This series of problems with conventional copyright lead filmmakers to the adoption of Creative Commons licenses which with their optional modalities are regarded as the digitally native response to endemic issues of traditional copyright trying to go digital.

### **4.5.1 Regulatory Capture**

The film industry, like all major entertainment or IP industries, is very concerned about piracy although its effects are not as profound as in the music industry. The music industry was the first to experience the effects of peer-to-peer technology and file sharing. One reason for this is the technology itself, as video files are much larger than audio files and that makes it relatively harder to upload and download them. But even though the film industry is not exceedingly hit by piracy, they still play a pivotal role in lobbying for extending copyright, often in ways that abuse other rights such as fair use and fair

dealings, criminalising copyright infringement and introducing technical protection measures which black box digital devices and infrastructure (Decherney 2012). The entertainment industries want to enforce control of copyrighted content at multiple points in the network through for example forcing intermediaries to use filtering protocols and they use a combination of legal and technical measures to ensure compliance with copyright law. There is therefore, a widespread architectural and legal re-alignment taking place and both the film and music industries lobby to shift the control over creative content, its production and consumption, away from individuals and towards copyright holders.

#### **- Extending Copyright While Relying on Existing IP:**

The case of Mickey Mouse entering the public domain is one of the most popular stories filmmakers tell when they want to give an illustrative example of mainstream industry's hypocritical position and how copyright is captured by the industry's interests. Even creators who support the basic principles and logic of copyright find Disney's strategies to protect its Intellectual Property "insane". Peter, an Edinburgh based independent filmmaker and digital entrepreneur, mentions:

"Disney is the largest company in the world and every time Mickey Mouse is about to go out of copyright, they change the law. I mean, it first appeared in 1928 in "Steamboat Willie" that was also the first sound synchronised cartoon. "Steamboat Willie" and of course Mickey Mouse was supposed to enter the public domain by what? 1956 I think, but Disney by then had become a very powerful corporation and they lobbied strongly for the extension of copyright and copyright was indeed extended. Exactly the same situation is repeated whenever Mickey's copyright is about to expire. Now I'm sure that we can expect to see another extension of copyright terms by 2023 [Steamboat Willie is supposed to enter the public domain in 2023]." (Peter G., interview, October 24, 2013).

Independent filmmakers do not fail to notice the double standards involved in such practices. Hugh mentions that what most people don't know is that "Steamboat Willie" is actually a parody of Buster Keaton's film "Steamboat Bill,

Jr.”, pointing out how Disney continually relies on existing IP while simultaneously being overly protective of its own, derivative IP:

“When Walt Disney in the ‘30s decided to make a feature length animated film, he chose Brothers Grimm's Snow White because as himself said it was a well known story.” (Hugh H., interview, October 21, 2010).

Hugh insists that especially nowadays it makes perfect financial sense for Hollywood to be relying on existing IP:

“They have figured out that the way you get a return on a film is that you make something that is so very polished and so very targeted to a very wide audience, you put it out there with awful lot of money behind it... but if you don't succeed, you've lost 7 million dollars, so you can't afford to do that very often so that's why they like to rely on existing IP, that's why they make loads of sequels, stuff from different comic books”. (Hugh H., interview, October 21, 2010)

So Hollywood is actually making the most out of the availability of works through the public domain and through using of existing IP, while on the other hand remains vigilant and tenacious towards potential violations of its own IP.

It appears that all players and interest groups involved in the debate understand, although they do not openly acknowledged it, that a healthy public domain gives tremendous boosts and promotes innovation in filmmaking and in all creative industries. Officially though major industry representatives maintain that the expansion of copyright is good for the film industry in general. Hugh also points out that the whole Hollywood system started as a way of evading patent law. While Edison was based in New Jersey making his films and enforcing his patents, many independent filmmakers moved their projects to California because the distance from New Jersey made it more difficult for Edison to enforce his patents. So while the Hollywood studio system started as a patent outlaw, now it is the strictest enforcer and lobbyist for strong copyright.

## - Technologies that Regulate

The entertainment industries' strategies for copyright enforcement go beyond the direct manipulation of regulatory procedures. They also need to make sure that the IP laws they directly or indirectly dictated will be respected by everyone and of course this is not a matter to be left to the willingness of individuals. Copyright infringement has been criminalised through the implementation of highly controversial legislations like the DMCA. Jamie keeps a close eye on legal developments related to digital copyright:

“With the DMCA and their DRM provisions what they wanted to achieve, and they did manage, was to fight piracy before it happened. And to do that they just had to manipulate the technology. To make the technology obey copyright without the need of human intervention. The goal is of course to obliterate file sharing altogether and whatever rights happened to stand in the way, were fair game.” (Jamie K., interview, June 12, 2011).

Naturally, a blanket prohibition of file sharing like the one imposed through DRMs, completely disregards fair use and fair dealings rights, making many perfectly legitimate uses of copyrighted content impossible. So copyright's balancing interests function never seemed more divorced from reality.

Copyright exceptions and limitations such as fair use are especially important for documentary filmmakers whose work constantly references different sources, many of them copyrighted. In the DIY filmmaking community, such documentaries are amongst the most common features produced, so the problems are especially relevant. Adding to this, the lack of funds to clear rights is a luxury low budget films can rarely afford. Paul agrees that DRM are very problematic for many creators who seek to exercise their fair use rights:

“They want to extend copyright's domain beyond the legal sphere to the technological one where protection would be automatic and cover every possible use, even the ones that are permitted by law... So nobody except the copyright owners can control the use of copyrighted works. Fair use, public interest, the common good become irrelevant and they are out of the picture... We can only use the sort of material that the owners of copyrights approve of and only if they make it available at a reasonable



price. These practices compromise our work and it is detrimental not only to us, the filmmakers and creators but also to the general public.” (Paul T., interview, August 12, 2012).

Documentarians portray themselves as being on both sides of the debate since they are copyright holders themselves but they also rely on copyrighted works to produce their films. They therefore perceive that there is a fine balance that needs to be maintained in order to promote both creators’ well being but the public interest as well.

#### **4.5.2 Effects of Extensive Copyright on Independent Filmmakers**

The practices of the film industry described in the previous section create many problems and often inescapable obstacles for both artists who need to rely on pre-existing resources to produce their own creations and for audiences that want access to such creations. Arguments against restrictive copyright point out that what is at stake here is not only cultural creation but also the freedom of expression and speech. Filmmaking like other creative activities, takes place within a penumbra of related and interconnected practices that are often at odds with the legal framework promoted by the established industry players. Limitations, commodification of creative output and black boxing of digital devices and infrastructure create a maze of obstacles through which the independent creators have to navigate, often unsuccessfully.

With regards to creators’ estimation of industry practices there are several themes that emerge, like the belief that copying preventions do not work for the digital domain and consequently copyright law becomes irrelevant when it comes to monetising their work, and it becomes highly disruptive in the hands of the legal departments of major studios when it comes to creators borrowing from existing resources. This estimation creates distrust towards both traditional and new intermediaries and increasing alienation towards the legal system. Many object even to the term “Intellectual Property” itself. Nina is a U.S. based filmmaker, cartoonist and free culture activist who argues that intellectual property is actually not property at all as it lacks basic qualities like

exclusivity. Instead, she points out, it is a government granted monopoly that imposes artificial scarcity where especially in the digital domain it cannot be applied. She also emphasises that in her experience the current IP system benefits 1% of artists but for the rest 99% it is a burden for their freedom of expression. She talks about how the industry promotes a permissions and limitations culture by painting a picture that equates sharing files with stealing:

“In my short cartoons I try to counteract the big media industry's propaganda of recent years, they have been telling everyone that copying or downloading is stealing. Downloading my films is actually very beneficial to me, that's something I really want to let people know, if you watch my film you're helping me, you're helping the film, you're not stealing, you're not taking anything from me, and if you tell people about it you're helping me even more if you make a donation you help me even more, it's all good, sharing culture is actually very good for everyone, including the artist especially the artist. So it's definitely not stealing.” (Nina P., interview, November 11, 2012).

Paley points out that the business model based on royalties and copyright protection is counterproductive for small creators because in her experience the more you control your content, the less far it can go. Once you open up your film to the audience, they can spread it much further than individual creators and agents and along with the film the name of its creator also spreads.

Jamie mentions that the MPAA in a series of propaganda videos is trying to promote the idea that piracy, though it does negatively affect producers in a small way, whom it really hurts is the film crew and people like sound technicians, the light guys and all the rest of smaller professionals in the process. The truth is though that the precarious nature of these types of smaller film related occupations has been intensified by the monopolistic practices of major film studios. Jamie explains:

“I think what's sad is that if you look at how copyright is marketed, because no doubt there is a marketing campaign around copyright. For example rights holders put a lot of money in the Intellectual Property Organisation, they put a lot of money in marketing it and they market it always as the tool for the small creator. So it's always like: 'you're a small creator so you want protection, don't you? And we'll supply that for

you.'... If I just analyse the statistics, the figures, you see that copyright in general protects large businesses and the people who can afford the lawyers to actually litigate.” (Jamie K., interview, June 12, 2011).

And Jamie believes that the institutional and professional bodies that support independent filmmakers are just as biased in favour of strict and strong IP regulation as the major studio industry:

“I just came from an event today by Creative Scotland and you know you've got 50 young and not so young new filmmakers in the room who have been told constantly that the best way, the only way is to protect your rights, to make sure you don't get remixed and you don't get your work copied. And this is just so... it is so wrong.” (Jamie K., interview, June 12, 2011).

Resorting to the justice system to settle copyright disputes had rarely been financially feasible for small creators and when it was pursued it did not yield the expected results. Peter gives an example of filmmakers' disillusionment with the legal system and the perceived corruption that permeates it. He contrasts Disney's lobbying and Mickey Mouse's perpetual copyright with the case of another American cartoonist, Roger Crumb:

“His most famous drawing, because it was stolen so much, he eventually took it to court and the judge decided that because it was distributed so much already, it now belonged to the public domain. So he lost the copyright of his most famous drawing because he is not Disney, that's the thing. He could not afford to line the pocket of the judge.” (Peter G., interview, October 24, 2013).

So as already pointed out, on the one hand we have a very prosperous industry using existing IP and resources from the public domain to create its own copyrighted content, and they will then go to all extremes to guard it from ever entering the public domain. The other side of the story is that this sort of protection is only available to those who are willing and able to pay handsomely to maintain legal departments that would offer appropriate advice and litigate in their behalf. For the rest of creators, copyright becomes relevant only in a negative form that dictates what resources they should not touch, being the intellectual property of major companies. Their own IP is only secured to the

extend that they can afford to pay for specialised legal services and willing to go to court in case it is violated. This is not the sort of action though that the majority of independent filmmakers are either able or willing to follow. For most of them, while being recognised as the creator of a work is vital, restricting access to it seems counter intuitive. What they demand from copyright is therefore something altogether, different in both qualitative and quantitative terms, than all rights reserved copyright has in store for them. Independent filmmakers seek a legal re-adjustment to shift the control of how content produced, distributed and consumed away from intermediaries towards their own hands and this is the reason they often choose to license their works under Creative Commons.

## 4.6 Closing Remarks

In this chapter we focused on the filmmakers' experiences, understandings and motivations that lead them to the adoption of the Creative Commons licenses. As we explored the general context and reasons that contribute to independent filmmakers turning to open licensing systems, we simultaneously discovered a deeply fragmented landscape where filmmakers feel alienated by the mainstream industry's practices and their consequent exclusion from its structure. As independent filmmakers criticise the strict control and centralisation of resources by the mainstream industry, they also feel that they can partly rectify this situation by taking advantage of the affordances of digital technology tools. Through the employment of such tools they feel empowered to experiment with novel forms of storytelling and innovative filmmaking techniques. Such innovative forms of creation though, do not make good candidates for traditional copyright protection. Increasing legal complexities combined with disappointment towards the mainstream industry intermediaries result in the Creative Commons licenses' adoption by independent filmmakers, which regard the licenses' as the legal part of their digital toolkit. This is how open content filmmaking starts to form as a distinct movement with the general film industry. In the next chapter we will focus much closer to the specific strategies and alignments that independent filmmakers put in place, while we investigate the making open content film projects.

## **Chapter 5**

### **An Examination into the Making of Open Content Film Projects**

#### **5.1 Introduction**

After the exploration of the broader context and the reasons that motivate independent filmmakers to experiment with alternative copyright licensing regimes, in this chapter we will proceed into an examination of the strategies that filmmakers employ around the implementation of the Creative Commons licenses in open content film projects. We will look into the diverse arrangements, organisational configurations, and new patterns and alliances that filmmakers build around their film projects, which are meant to assist them not only during the different filmmaking phases but also throughout their whole career trajectory within the industry. It should also be noted that during our investigation into the digital business strategies that support independent film projects, we will also include cases of independent filmmakers who although they may not be adopters of the licenses, they nevertheless employ very similar tactics and tackle the same issues as the licenses' adopters. So instead of differentiating between users and non-users of CC licenses, I choose to examine the strategies and practices of independent filmmakers together, regardless of licensing choices. The criterion here is the implementation of arrangements that depart from the mainstream industry through innovative use of digital tools. Many filmmakers offer free access to their films, experiment with digital distribution or create online production platforms without using CC licenses or any other copyleft license. On the other hand, many CC adopters switch back to 'all rights reserved' copyright for different projects or for different distribution channels. The relevance of non-users of the licenses was demonstrated during the research and it applies both for the ideological aspect and the practical

considerations of open content filmmaking. The users/ non-users dichotomy is therefore surpassed by following the circulation of meanings and practices around open licensing implementation, and through a relatively long-term, biographical perspective of different projects' and artists' trajectories. In this manner, we manage to reveal the temporal aspect of Creative Commons licenses' adoption and the nuanced stance of both users and non-users of the licenses towards copyright issues and digital technology tools.

In section 5.2 we will start by questioning the explicit motivations of independent filmmakers for choosing to adopt a Creative Commons license for their projects. Although such motivations have complex justifications and they relate to a variety of both practical and ideological issues, we can identify three main categories of rationales according to filmmakers' accounts. Filmmakers can therefore regard open licensing implementation as the answer to practical problems during filmmaking; as a way to assert their ideological affinities and enact digital activism through their films; or as enabling and promoting experimentation with digital tools and innovative forms of filmmaking. The motivation towards CC licenses' adoption stems from a combination of all three of these rationales, albeit in varying degrees and emphasis between them, for each of the participants. In section 5.3 we elaborate on the importance of building an online community around open content film projects. Such communities of fans and potential collaborators support filmmakers in direct and indirect ways. Indeed, it can be argued that building such communities is not merely the means to an end; that they don't simply serve the purpose of assisting in the production and distribution of an open film, but as a matter of fact it is the other way around. The production and distribution of an open film becomes the means through which filmmakers achieve a more valuable in the long-term goal: the creation of online, and indeed offline communities of supporters. Filmmakers are not primarily interested in financial remuneration from their open content films. They rather regard them as a means of promoting their 'brand', enriching their portfolio of expertise, gaining reputation and

attracting an audience, hence the importance they place in the building of a community of supporters.

In section 5.4 we investigate the different means of financing and revenue generation around open filmmaking. Filmmakers explain how they use crowdfunding, sales of related merchandise and voluntary donations to financially support their activities, although they often admit that these strategies are not really sustainable and they have varying degrees of success. What is much more interesting here and has been largely neglected in the relevant literature, is how filmmakers begin to adopt innovation strategies from the IT industry and more specifically from the service based model of Open Source Software. So while allowing free access or even modification of their films is not a lucrative or sustainable endeavour in itself, when managed properly, it can become the catalyst for recognition of real profitable ventures. Amongst such ventures is the promotion of virtual infrastructure, most commonly taking the form of film production, distribution and marketing platforms targeted either towards other filmmakers or towards the audiences. So instead of disintermediation processes, a notion that is prevalent in the Creative Commons discourse and digital media analysis, we can actually witness how certain actors seek to build and promote their own virtual infrastructure and become themselves the new intermediaries of the digital environment by situating themselves in key positions within these novel online arrangements.

Section 5.5 examines the ways that open licensing influences the production of independent films and how filmmakers adopt digital technology tools to bring down the cost of film production. Having a straightforward legal framework to rely upon becomes even more significant, as filmmakers experiment with novel forms of filmmaking such as transmedia storytelling. In section 5.6 we examine the multitude of ways for distributing an open content film. With regards to the online environment, filmmakers rely on peer-to-peer technology and different social media to distribute their films, in a manner that blurs the boundaries between distribution and marketing. What is more, open content filmmakers do



not limit themselves to digital distribution methods but they also actively seek distribution deals with the mainstream industry intermediaries. So while the most fervent proponents of the Creative Commons licenses dismiss the importance of traditional intermediaries, presenting them as completely redundant for the novel practices of digitally connected creators, we observe that such views are very much disconnected from what is really happening. Through this research, which is grounded on the actual practices and situated activities of open content filmmakers, we can see that open content film projects generate a complex innovation ecosystem where novel digital practices are combined, though not without some tension, with the established practices of the mainstream film industry and its traditional intermediaries. Section 5.7 also provides evidence of this uneasy alliance between ‘old and new’ or ‘digital and analogue’ tactics, by presenting how open content filmmakers extend their practices from the digital realm to the offline world. Here I will present two different types of events, centred around Creative Commons licenses, that attempt to bridge the online/offline divide: the organisation of Creative Commons Film Festivals and of Public-Private Screenings. Such events attempt to extend the relevance of online practices, to offline networks and through personal interaction. Such combination and co-evolution of digital and analogue tactics are ever present in open content filmmakers’ activities. And although all these projects can be regarded as exercises in being “more digital”, that does not necessarily lessens the importance and relevance of traditional strategies. In short, we witness both continuity and disruption with regards to creators’ practices and while in some occasions this can create some tensions, more often “digital” and “analogue” forms and strategies co-exist, mutually shape each other and develop further through their interaction.

## 5.2 Reasons and Motivations for Adopting a Creative Commons License in Independent Film Projects

So what is it that motivates filmmakers to invest significant resources into building a project and then take the decision to distribute it openly and freely under a CC license? The interpretations and meanings assigned to the licenses' use are manifold. Participants judge their efficacy sometimes based on how well they fare as an alternative regulatory framework for managing digital copyright, other times on whether they sufficiently promote the ideals of the “open ethos” as it has been formulated by organisations such as the Electronic Frontiers Foundation and the Open Rights Group; and finally, on whether they enable and facilitate a set of practices such as collaborative innovation, cultural participation and sharing to occur and develop online and in some instances even offline. Different sort of motivations often co-exist in varying combinations, in the decision to use an open license for a given independent film project. It is therefore possible for a filmmaker to be content with Creative Commons as a legal response to digital copyright, but to otherwise not acknowledge their social or economic significance. And alternatively, other creators may use the licenses strategically to gain attention and boost the uptake of some of their films through extended online social networks but continue to rely on traditional copyright for their other works that are considered more commercially viable.

Open content film projects have diverse trajectories and goals, and therefore different reasons for adopting a CC license. Participants often mention how they feel empowered by being able to reach potential audiences of millions of people by the use of networked technologies, and the choice to adopt the licenses is the legal counterpart of such possibilities that would facilitate and widen the reach of their work. Felix is an independent filmmaker based in London who uses the Creative Commons licenses for some of his short films. He explains:

“What I really want, what is significant here is that people out there have a chance to see this film. I want it to reach the largest possible audience.

Creative Commons is another way to make this intention explicit. A CC logo attached to the film, it's kind of a flag that says: 'there are no complications here, no obstacles, just go for it. Access is open.' This has tremendous value, what with all the confusion around what you can legally access online and what you shouldn't." (Felix G., interview, November 12, 2011).

Filmmakers often claim that they take part in a process that liberates audiences and democratises cinema or specific aspects of filmmaking such as financing or distribution, albeit the manner of doing so happens in diverse even contradicting ways. Kayle explains his views:

"There is a lot of talk about changing business models, about sustainable filmmaking, basically just trying to figure out how do you make money after the internet stormed the industry's monopoly of distribution... But it's not about just distribution or just production for that matter. What we should look at is how we, as filmmakers, must go beyond our role and take charge of reaching out to the viewers... Engage these people worldwide and, you know, through any device they choose to use, even make them part of the filmmaking process instead of the ending point. Viewers expect to be less passive, they expect to collaborate with creators, they expect to be connected with each other and with us.... If you ask me, this is the approach we need to follow, we should be inclusive, we should be transparent and open, and the business models and sustainability will come naturally through this whole process... It's a direct approach and it takes a lot of experimentation but that's the fun of it, right?" (Kayle N., interview, December 12, 2011).

So, the common thread for open content filmmakers is to be found as much in *why* they participate in Open Content Cinema, but also in *how* they actually enact Open Content Filmmaking. Their general claim is that their motivation stems from a wide discontent towards the traditional industry structures and intermediaries as well as towards the exceedingly restrictive copyright legislation that the industry relies on. And this discontent is matched by an exuberant enthusiasm for the possibilities that open up to them through experimentation with digital technology tools. In terms of actual practices, there can never be just one formula that fits all projects, not in Open Content Filmmaking and not even in the mainstream industry. Each project traces its own trajectory after different trials, many of which may initially fail. But as Hugh points out: "What is important is to fail fast, and then try again" (Hugh H.,

interview, October 21, 2010). Learning by failing, whether failing to complete a project or failing to attract an audience, can offer valuable lessons for filmmakers' future innovative business practices since in the volatile new media landscape there are no fool proof ways to complete a creative project. Trial and error practices and adaptability to new circumstances are therefore considered as key assets for open content filmmakers.

All the different motivations that lead to the adoption of a Creative Commons license can be roughly grouped in three categories depending on which dimension of the licenses' significance users evaluate as most crucial to the creative process. Hence, "Pragmatism" refers to all the practical reasons for which adopters choose to use the Creative Commons licenses, such as appreciating the various different licensing options on offer, as well as the simplicity and widespread appeal of the licensing suite. Motivations related to asserting digital activism tend to focus on the promotion of digital rights and on furthering the open or hacker ethos upon which the internet and the world wide web were built. Finally "Experimentation" is another crucial affordance of the licenses, and one that motivates many creators eager to innovate with new forms of storytelling through digital technology and social media, without necessarily attributing an overt ethical dimension to the licenses' use. Below I examine each of these clusters of motivation in more detail:

#### **- Pragmatism/ Practical Considerations**

A pragmatic use of the licenses implies an instrumental and strategic view of Creative Commons adoption. In such occasions, filmmakers use the licenses mainly as a promotional tool and for specific works that they intended to offer freely. Hugh comments:

"You can say that Creative Commons works very well for loss leader type of films. You could get money from them but you probably won't. That's not the point. The licenses help to get your name out there. To build a fan community." (Hugh H., interview, October 21, 2010)

Given the various different elements' combinations in Creative Commons licenses and the flexibility these offer in terms of waiving specific rights, pragmatists acknowledge the Creative Commons licensing suite as a user friendly, simplified and adequate regulatory framework for the digital environment. But beyond ease of use and clarifying copyright intricacies, they also find another advantage from adopting the Creative Commons not simply as a license but also as a brand. The Creative Commons organisation and its extensive affiliate network of promoters and adopters provide in many occasions widespread reach and visibility for works bearing its open licenses' brand. Attracting audience's attention, given the wealth of online resources, is a much sought after goal, even if the attention is focused on the choice of license and not exclusively the open film project per se.

Creators can choose one of the six main licenses from the Creative Commons licensing suite depending on which rights they are willing to give up and how they want their work to be reproduced and modified. While there are many other licenses that allow free copy and redistribution of works, they tend to be more specifically targeted towards either at particular types of work<sup>23</sup>, or written and adapted for a specific organization<sup>24</sup> without having the intent to be adopted by a more general public. On the contrary, Creative Commons has devised a number of generic categories<sup>25</sup> that can be adapted to suit different types of creations and with different degrees of protection. When a creator

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<sup>23</sup> The most prominent example of such license is the GNU General Public License written specifically for computer code by Richard Stallman of The Electronic Frontier Foundation. This license was also the inspiration for the drafting of the Creative Commons Licenses.

<sup>24</sup> An example of an organisation-specific type of open license is the BBC's Creative Archive License which has very similar terms to the CC BY-NC-SA but is explicitly drafted for the BBC's Creative Archive resources.

<sup>25</sup> As we have already seen in chapter 2, there are four main elements in Creative Commons licenses which can be combined in various ways in order to produce six different licenses. These basic elements are: BY "Attribution", NC "Non-Commercial", ND "Non-Derivative" and SA "Share-alike". Depending on which choices a creator makes regarding the commercial use, alteration and future reproduction and licensing of the work, these four basic options lead to one of six Creative Commons licenses which vary in terms of the level of restrictions. Most of these features are optional for the copyright owner to choose from, attribution though is a general term, which applies to all Creative Commons licenses constituting the minimum level of protection for the copyright owner.

decides to offer a work to the commons without expecting any direct financial compensation or desiring to impose any limits to its reproduction and modification, they have the option to adopt the Creative Commons license with the least restrictions, which is equivalent to a dedication to the public domain, that is the Creative Commons 0 (CC 0).

Chris is a young filmmaker making videos for advertisements, music clips and other commercial works. Nevertheless, he has chosen to license some of his own independent video projects under Creative Commons (CC-BY SA). He explains that having secured a relatively steady income from his commercial works, he decided to adopt open licenses because they help him make the best of a not so ideal situation. He therefore finds open licenses as a sensible type of copyright protection for the digital environment:

“In one way or the other, my work is out there, at least like this I retain some control and gain extra attention.” (Chris C., interview, April 2, 2013)

Other creators may choose a more restrictive approach by adopting a Creative Commons Attribution, Non-Commercial, Non-Derivative (CC-BY-NC-ND) license that allows them to restrict commercial use and remakes of their films and thus leave open the possibility of employing full copyright through different distribution channels. Such practical use of the Creative Commons licenses places them in a central position among strategies adapted for the digital realm but often in combination with other licensing strategies. Felix explains why he uses different types of Creative Commons licenses for his video shorts:

“No, I don't use the same Creative Commons license for all my projects. I change between different licenses depending on the project, my collaborators, what I want to achieve. I even switch to full copyright sometimes, when I think it is what suits the film best.” (Felix G., interview, November 12, 2011).

So their choice is often described in tactical and temporal terms and depending on the circumstances they use “all rights reserved” type copyright for different projects or even for the same Creative Commons licensed project when it is

distributed through more traditional channels. It appears then that the traditional means of distribution and funding do not lose their importance, but they're supplemented and some of the difficulties related with them can be overcome by the new opportunities offered by digital media. Creative Commons has become a part of this new landscape and is perceived as opening up different possibilities for the filmmakers.

Another practical reason for the widespread popularity of Creative Commons licenses is that they have also managed to translate intricate copyright law issues into common, non-expert language as well as having built a diverse network of different actors devoted, admittedly to different degrees, to promoting their cause. The Creative Commons organisation, using a rather humorous tone, they differentiate between "Human Readable" and "Lawyer Readable" forms of the licenses, which co-exist with the "Machine Readable" form. For Matt, an independent, open content filmmaker and author focusing on digital art, this simplicity and user friendliness contributed to forming a positive perspective on the licenses:

"There are still areas that need clarifications but in my view the Commons Deed, you know the "Human Readable" form of the licenses, spells out exactly what I need to know and what my audience needs to know about my intentions for distribution and re-use of my film. For those who want to go into more depth there is always the "Lawyer Readable" form [laughs]." (Matt H., interview, December 16, 2010).

So while for the lay audience the Commons Deed is all they will need to read to understand the function of the licenses, whoever wants to go into more depth can also easily find the Legal Code. The third layer of the licenses is the machine readable format which is a small segment of code, that the copyright owner can cut and paste into web pages. This has two functions: it displays the Creative Commons logo and the icons related to the given license and it also contains metadata which can be used by search engines in order to locate material which are available under Creative Commons by directly associating the given creative work with their particular license status, in a machine readable way. Chris explains why he finds the machine readable form of the licenses useful:

“You now have more and more people checking online and looking for films they can watch without necessarily having to download them illegally from a peer-to-peer. They check the Internet Archive, they check YouTube and DailyMotion... Having a machine readable license means the audience can actually find your film just because you use a CC license. That’s not an opportunity I’d be willing to pass on.” (Chris C., interview, April 2, 2013)

In general, filmmakers find that the different elements and layers of the licenses are very straightforward to come to grips with and they are overall satisfied with the ways they are addressed. Hugh, being a machinima creator, feels that he has to be always vigilant when it comes to possible legal complications of his creative works. Using computer graphics engines and other game assets to make a film can in certain cases violate the copyright of the computer game’s rights holder. So when it comes to licensing his own work he aims to make it as simple as possible both for his audience and for himself. He states:

“CC is very, very helpful for simplifying and clarifying the legal impact. Often low budget producers do not know or sometimes care about copyright. Instead of such situations leading to legal problems, with CC you can just avoid all that...For the types of films that I make I do need legal advice because it is a pretty grey area legally. But I’ve never needed clarifications on CC usage, it is only regarding machinima issues.” (Hugh H., interview, October 21, 2010).

This combination of being able to simplify complex digital copyright issues, while maintaining ease of use, appear to be an important factor in Creative Commons’s widespread appeal.

Creative Commons is by now one of the most popular legal tools related to the open culture movement. Nicolas is a director experimenting widely with Creative Commons, crowdfunding, as well as many other digital production and marketing tools. He explains that the popularity of the Creative Commons organization itself is part of the reason for its adoption:

“The reasons why we chose to use CC licenses are both pragmatic and ideological. This choice gives our project something very valuable in the competitive cinema industry: a differentiation, something that makes it special. Without the use of CC license it would have just been another



independent production, possibly without the prospect of getting someone's interest" (Nicolas A., interview, May 17, 2011).

Ton is an open content filmmaker, software developer and chairman of the Blender Foundation, which is a non-profit organisation responsible for the development of Blender, an open source 3D computer graphics software. For him, ideology does not even enter into the equation when it comes to license adoption. As he points out:

"I can't speak for the other people at Blender but me, I don't really consider myself much related to open culture. Not in the ideological or political sense. It's just that people who tend to talk about free and open culture, they don't really seem to make it... I've said it before, all this talk, all this blathering, open this, free that, it sort of disturbs me a bit. Free Culture is about doing it. Open Content Filmmaking is about doing it. So in that sense we are open culture." (Ton R., interview, October 23, 2011).

Undoubtedly, Creative Commons is by far the most successful open licensing system out there, a fact demonstrated by the adoption rates and the diversity of actors who use them. So some filmmakers use them as promotional tools. As Timo says: "Using Creative Commons is simply good marketing" (Timo V., interview, July 13, 2011). Others use them in order to underline the uniqueness of their own projects by stressing how their project is for example "the first film that uses collaborative production" (Matt H., interview, December 16, 2010), and thus manage to reach the widest possible audience. Michela is a young artist who has worked as writer, director and producer in different digital projects. She explains how she regards the opening and freeing of one's work as a contributing factor to gaining attention for creators:

"If other people don't use an open license for their work, that means that they can not reach the same audiences. So there is actually more attention available for my work, so yes, free works have a competitive advantage right now when it comes to attention. Of course, if everybody suddenly chose to offer their films openly that's great too because that would mean we are in a much more open and free society. That competitive advantage would be gone but competition would be based in a much fairer ground. The best films would attract the most viewers so quality would be the filtering mechanism" (Michela L., interview, October 15, 2011).

Filmmakers therefore, are quick to realise the marketing value of the Creative Commons brand and how offering their open film to the commons gives them an additional advantage while competing for audience's attention online.

#### **- Digital Activism**

Some filmmakers, and on certain occasions, are primarily motivated by the desire to promote the "open ethos" online. They license most if not all of their works under Creative Commons and find strong ideological affinities between the organisation's rhetoric and their own viewpoints. In such occasions, the use of the Creative Commons licenses is regarded as a challenge to the established norms of copyright usage. They certainly also recognize the practical appeal of the licenses, but for them what takes priority is the preservation of digital environmentalism. Matthias, a young independent and open content filmmaker explains his reasons for CC adoption:

"I came across some books by Lawrence Lessig. I've always been interested in the philosophy behind free software. So extending the same principles to our little world of filmmaking was too exciting to pass on... And since for coders it has worked very, very well and I mean, even making profitable and better software then why shouldn't it work for films? The Hollywood industry has been keeping us hostages for too long with increasing the terms of copyright and using DRM for their media... It's time to answer back for the things that matter to us" (*Matthias M., interview, February 6, 2012*).

Creative Commons is by now, much more than just a licensing system or even a non-profit organization. They utilize social movement dynamics and lobby for a more nuanced approach to copyright law, so it has therefore become a symbol or a brand which carries specific though diverse cultural, economic and ideological connotations both for its supporters and its opponents. Vincent is one of the filmmakers that use the licenses in order to advocate in favour of a sharing ethic that is now enabled by the use of networked ICTs. He makes a point about how it was CC licenses themselves that taught him how there could be an alternative way for making and distributing films. For him CC licenses exemplified this new paradigm of cultural production:

“There is a very strong link between CC and my way of making films. I put all my own work under CC and not because I think it will particularly help in terms of increasing revenue but because I agree with this way of thinking. You know for me it’s a way of life and it is something to fight for and pursue.” (Vincent M., interview, June 27, 2011).

We can therefore see that the practical considerations and even the urge to innovate and experiment with digital tools become secondary to what is judged to be more a more meaningful cultural practice: the preservation of a rich digital commons.

Documentary filmmakers concerned about the future of cultural production are amongst the most vocal participants when it comes to the values and the ideology of openness and how it offers a powerful alternative to the attempts of the mainstream industry to restrict access and remix. Simon is the director of “TPB AFK: The Pirate Bay Away From Keyboard”, a film that follows Peter Sunde, Fredrik Neij and Gottfrid Svartholm, the founders of The Pirate Bay through a copyright infringement lawsuit which resulted in them being imprisoned. Simon explains:

“We had six of the largest television networks in Europe as our major funders. This has not happened ever before. A film licensed under CC to have the backing all the major networks... I had decided to release it for free even before we started, that was non-negotiable. It would be an insult not to. It’d be disrespectful both to the Pirate Bay founders and to all the fans that supported us on our crowdfunding campaign. But we did have to explain to our partners from the major networks what our intentions were and what Creative Commons was [laughs]. Yes, they’d never heard of it but once we explained they actually supported us. Well, there were some back and forth on which license we should go for, at the end we compromised and went for the CC Attribution, Non Commercial, Non Derivatives. If it’d just been up to me I would choose the simple CC Attribution, Sharealike. Still, having the majors involved in film that actually premiered on the Pirate Bay that’s a major step forward. It’s the proof that even the mainstream industry can change.” (Simon K., interview, May 14, 2013).

For filmmakers like Simon, cultural creation should not be restricted or limited neither in its production nor in its distribution phase. They talk about a cultural commons that we should all have uninterrupted access to as part of a

democratic community and they warn of the dangers that await the society whose cultural creation is constrained, crippled and manipulated by the mainstream industries. So, when it comes to independent documentary productions, especially those interested in digital rights, spreading the message is their most important goal and not necessarily finding a sustainable revenue model. Adoption of a CC license is therefore their primary option, since dedicating their work to the public domain would mean relinquishing all control over how their films would be consequently used or even whether they are given credit for them. What is more, filmmakers may very well seek mainstream, commercial distribution in order to recoup their initial financial investment, if they opt to reserve the commercial rights as in the case of the Non Commercial clause in CC licenses. As they say, none of these options are available to them if they dedicate their work to the public domain. This is why Creative Commons have indeed filled an important need in the distribution of creative work, as they offer choices on which rights creators wish to reserve and which rights they choose to waive.

#### **- Experimentation**

Some filmmakers are motivated by the sheer excitement about all the possibilities that open up to them through the use of ICTs. They therefore get involved in different projects to test innovative ideas in various creative areas, and when it comes to the legal arena, what can be better than the widespread legal innovation that is Creative Commons? So adoption of the licenses becomes the legal part of a general trend towards experimentation with new media, innovative business strategies and novel artistic forms. Creative Commons licenses become the legal basis that allows socio-economic innovation to unfold while simultaneously being itself informed by such practices. Ton, who along with the other members of the Blender Foundation, they have developed several open film projects, stresses how Creative Commons is part of this new ICT enabled creative landscape:

“The big issue for me in our age of networked digital media where you have access to all this information everywhere and to all these technological tools is how do you place yourself in a position where you have the freedom to explore and make the most of these possibilities. How do you go about making films and learning about the technological tools you can use for making films and for connecting with your viewers? I think that the link to CC here is obvious, it's all part of this new, dynamic movement and this desire to experience, be hands on and access resources” (Ton R., interview, October 23, 2011).

Creators, therefore, place Creative Commons along side all the other innovative digital offerings that facilitate novel forms of cultural expression in their field.

Adopting an open license contributes in reaching out beyond a specific community or a filmmakers' target audience to potentially approaching a worldwide audience. Free and undisturbed online distribution offers opportunities that would never have existed under the traditional distribution channels. Hugh is creating machinima films that rely on video games graphics for the film's animation. He points out that tinkering with both technology and the law is what allows him to have his work reach as many people as possible which he believes is the right strategy for the digital environment:

“My motivations for using CC, I consider them crudely selfish. As a filmmaker my first job is to make people see my work. As the saying goes: an artists' worst enemy is lack of exposure... Machinima calls for experimentation, it's essentially a hack on computer graphics and Creative Commons is a hack on copyright law. That's a perfect match for creators who want to explore new artistic and legal directions.” (Hugh H., interview, October 21, 2010).

So, as opposed to traditional industry's release windows and fragmentation of audiences, it is immediacy and reach that appear to be taking center stage for some filmmakers. Nicolas explains that in his opinion filmmaking is facing great changes:

“The film industry is facing a radical change of the way it produces, it releases and values its products. This change has been caused mainly by the internet and its tools generating cheap and easy ways to transmit data, ideas and information... But it's open films that lead the way for change on a more equal basis. They show the way for the rest of the

industry. Filmmakers giving their films away for free, willing to risk it all, that's art isn't it? Pushing boundaries, experimenting with anything you can put your hands on." (Nicolas A., interview, May 17, 2011).

It is safe to assume that the filmmakers who foresee the changes in the film industry caused by digital technology, will try to position themselves in key roles during this time of reconfiguration, by being the pioneers in their fields through innovative use of technologies, social networks and regulation.

### 5.3 Finding an Audience and Building an Online Community

Open licenses' adoption indeed promises access to information and cultural resources but it even goes beyond ease of access, to being a decisive factor in engaging with online communities and reaping the benefits of social media. Open content filmmakers often talk about the communities they build around their films and some of them are keen to make a distinction between "*passive audiences*" which are the target of the mainstream film industry and "*active communities*" for the people supporting open content films. Vincent explains:

"The term 'audience', at least in the way that it's been used so far is going to become obsolete. I think 'community' is much more accurate because it just conveys this sort of engagement and even emotional involvement with all aspects of artistic creation... That doesn't mean that all the members of the community will be equally active or even active at all. Many people will just choose to passively consume a film or just buy the merchandise and that's absolutely fine. But those who want to be more involved, that want participate in the creative process, they now have a chance to do so. It's this segment of the community that filmmakers need to listen closely and respond to their needs. Open filmmakers manage to do just that. We are pioneers in that we understand how to bring together and maintain a community in a very fast changing landscape. And most importantly we know how to leverage the community's support to produce new and different kinds of films." (Vincent M., interview, June 27, 2011)

Whether indeed we can easily make a distinction between the old "*passive audiences*" and the new "*active communities*" is still very much open for discussion, as is Vincent's optimism for the success open filmmakers have in leveraging their community's support; but regardless of potential success or failure, open content filmmakers appear to truly value the importance of having a community of supporters around their open films.

The clearly defined stages of filmmaking that we encounter in the mainstream industry do not apply for open content filmmakers. So while engaging with the audience, mainly through marketing of a film, comes at the final stages of mainstream filmmaking, open content films are intent to engage their community from the very beginning when a film is still an idea and throughout

its development; while for many projects that allow for remixes audience participation remains relevant long after the creators have completed their films. Nicolas A. stresses how the involvement of their online community was part of their planned strategy for their film “Cosmonaut” from the very beginning:

“Approaching the audience from the beginning of the project, fostering a close and transparent relationship, inviting them to participate in the process of the film's production by inviting them to be part of a community through the use and distribution of material licensed under Creative Commons. This is what the “Cosmonaut” is about. Creating revenue streams was basically just an afterthought.” (Nicolas A., interview, May 17, 2011).

He claims their business model is based on added values and it is stimulating the participation of the audiences. Nicolas and the rest of the “Cosmonaut” team are very enthusiastic about the “*powerful tools*” that now exist in their disposal to create and distribute audio-visual content at a very low cost. They feel that they can now approach their audience more directly, effectively and productively, especially since:

“Intermediaries tend to disappear... The internet, peer to peer technology, video on demand and the emergence of new narrative forms like short videos and series you can watch on YouTube, have changed the consumption patterns for viewers watching films and this will be the catalyst for changing the whole industry.” (Nicolas A., interview, May 17, 2011).

Participants’ widespread belief is that open content films with their dynamism and adaptability are much better positioned to respond efficiently and timely to such changes in consumption practices than the old and established film industry intermediaries.

In many occasions Creative Commons licenses even contribute directly to the actual consolidation of certain online communities. The purpose of such communities is based upon both social interaction but also on the purely creative goals of a project for which the exchange of information and resources is a central issue. Consequently, knowing exactly what material is available to



them and under which conditions becomes crucial in order to support the smooth function of a community and the reciprocity between its members. Therefore, the expressed legal status of online resources, which is something that can be easily determined when a film bears the respective CC logo, plays a fundamental role in the development and functioning of online communities based on collaborative creation. Matt explains the importance of building an online community for his project “A Swarm of Angels”:

“This is at the very heart of the film, the community of angels that support it. So especially in the beginning for “A Swarm of Angels” building an online community was a top priority because we rely on this community for more or less every aspect of making the film: financing, production, distribution, marketing.... It starts with them and it really depends on their efforts.” (Matt H., interview, December 16, 2010).

To that effect, using a Creative Commons license provided a clear legal ground upon which all the different negotiations and interactions would proceed smoothly.

## 5.4 Financing an Open Content Film

Having attended numerous conferences, workshops and informal meetings with mostly young, independent filmmakers, there is one recurring quip I've heard in many occasions when someone wants to comment on the economic viability of a project or the future career expectations of independent filmmakers. The statement goes more or less like this:

“There is one guaranteed way for independent filmmakers to make £100,000. They just need to start off with £1,000,000.” (Josef M., interview, February 2, 2013).

Josef is a young independent filmmaker who lives and works in Edinburgh, and he was the latest person to re-iterate this statement during a regular informal meeting where independent filmmakers and people interested in their work get together to network and exchange ideas. This time, chatting face to face with Josef I had the chance to probe further on this statement, something I haven't had the chance to do when it was uttered during opening speeches in film festivals and conferences. Given the endogenous financial uncertainty in the filmmaking industry, why opt for an open license giving audiences free access to his film? Is he and all the other filmmakers who license their work under CC licenses really not particularly interested in acquiring any sort of financial gain from their work? So, what were the motivations and expectations he had for pursuing a career in a field where it was more certain to lose money than earning it:

“I wouldn't call it pursuing a career, at least not in the more established, corporate sense of the term. I feel I have something to say, to express and filmmaking is my way of communicating it. It is more my passion than my job.” (Josef M., interview, February 2, 2013).

Financial insecurity and precarious working conditions have been the norm for artists and creators, and although none of them claimed that the utilisation of networked digital technologies has put an end to their financial uncertainty, they have all expressed that they feel more empowered by the use of digital

tools and their ability to generate additional revenue streams from their online practices.

Most of the filmmakers combine traditional financing paths along with more innovative ways of raising funds to finance their films through the use of digital technology tools. This sort of digitally enabled financing can be employed more flexibly since it can occur before, during or after the production of the actual film. Filmmakers attempt to build large online communities around their films and appeal to them in order to get financial assistance. The most successful projects are the ones who have managed to build and mobilise such a community through the effective use of social media and digital communication tools. Nicolas explains:

“We have explored several new ways of funding. We take advantage of the enormous power of the internet as a diffusion tool and we try to find private investors online... We don't have to compromise our vision by trying to attract and bring big investors on-board. The internet makes interaction with our fans much easier and we just seize the opportunity. Through microfinance thousands of people can participate in our film as investors through crowdfunding. This community of supporters is much better to rely on than conventional investors. They are the ones that help promote the film and they are our hard-core fan base, so we already know even before the premiere of the film that there is this huge community ready and waiting for it. And we always try to keep them engaged, to not lose interest, so we appeal to them and ask them to participate in events, social networking, games and contests and keep them updated on all the innovative ways we use to release the film, through Creative Commons licenses and the internet.” (Nicolas A., interview, May 17, 2011).

Creators divide the financing of their films in different phases. Priority is often given to acquiring the financial means for the production and post-production of the film while cast and crew usually defer their payment to a later time. In some cases, the people and companies involved in an OCF either invest in it through an exchange of services for a percentage of net profits of the film, or postpone the payment of their salaries until the film is finished conditioned on the successful financing of the project. So the collaborators in a project become investors that provide resources and expect to receive part of the profits, while

the creators are responsible for providing the infrastructure and creativity in order to complete the film while they remain responsible for handling each and every one of the producing aspects. Felix explains:

“We all contributed according to our means. It wasn’t just our own money, it was the time everyone devoted in making the film, their expertise, their own homes and equipment even... Sure enough not everyone was equally involved in all the decisions and I had to co-ordinate a lot between them to make sure we are all on the same page... The bottom line is, we spent around 15,000 euros making the film and we made our money back and now we can even fund our next film.” (Felix G., interview, November 12, 2011).

As is the case with many independent films, whether open licensed or otherwise, for most OCFs bootstrapping is the only way to get a project started. The initial effort goes towards community building and raising awareness about the project and depending on the success of this phase, the community becomes the basis for the subsequent phases of financing.

Although the actual model and combination of strategies varied for each of the participants, certain key strategies of their revenue model emerged. Let us have a closer look at these various innovative strategies that OCFs use to get financial support from their fan communities:

#### **- Sales of Related Merchandise or By-Products**

This is one of the most popular ways for OCFs to monetise their projects. So while sharing their films in digital form is useful for building up a reputation, this then becomes the basis for charging for physical products with added value. They all assert that while digital content is easily accessible and reproducible at a minimal to no cost, viewers are still willing to pay for something extra, for an experience more than a product. Examples of this type of experiential goods would be attending a film festival or a film projection with the creator present, a special edition or a signed DVD or even film related memorabilia. Filmmakers explain that all these are basically different containers with added value that make free content more appealing and worthy of paying. And as Nina points out,

free content instead of inhibiting the purchase of physical objects it actually assists it:

“The content is free but the container is expensive so the more the content circulates freely two things happen: first of all it can travel further when it is free and then more people can actually buy the containers. So I have no intention of making content for sale in the future at all. For me this is effective, the model works. In the digital age content is an unlimited resource, people can just copy and copy and copy at no cost to me, but containers are a limited resource. I often say that in a perfect world I would be able to give also DVDs for free but we don't live in a perfect world and I can't do that because it actually cost me money to print the DVD to have it pressed and all that sort of stuff. So this is actually a limited resource but the zeros and ones that it's made from, in its digital form, there's no limit to that. It just doesn't cost me anything when people copy the film. So the interesting phenomenon which is exactly counter to what the media industries have been saying is that the more people see the film for free the more they want to buy these things, the more demand there is for film prints, DVDs and whatnot.” (Nina P., interview, November 11, 2012).

Jamie says he was influenced by Mike Masnick, the editor of the technology focused weblog Techdirt<sup>26</sup>, and his formula for adjusting creators' business models to the digital era. Masnick tried to provide a simplification of the new business models that open culture creators develop by expressing it through this equation: “Connect with Fans (CwF) + Reason to Buy (RtB) = The Business Model (\$\$\$)”<sup>27</sup>. Jamie explains his views on how this formula works:

“One of the things that I think it's important about what Mike is saying is this formula: connect with audience and give them reason to buy. And I think one of the amazing things that the internet managed to do is connect with audiences free or cheaply, very cheaply and get products to them very cheaply. I think that the tricky part is the reason to buy.” (Jamie K., interview, June 12, 2011).

But while himself and other open content filmmakers invest the most significant part of their activities and resources in figuring out how to give the audiences a reason to buy, Jamie is also concerned that industry intermediaries are instead clinging to past business models whose main preoccupation was to find out how

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<sup>26</sup> <https://www.techdirt.com/>

<sup>27</sup> <https://www.techdirt.com/articles/20090201/1408273588.shtml>

much is the audience willing to pay for a cultural product and then value their products accordingly. Instead, he insists that we should be reframing the question more along the lines of:

“For which sort of product or experience would the audience be willing to pay and how can I give it to them?” (Jamie K., interview, June 12, 2011).

#### **- Voluntary Donations**

Voluntary donations enable viewers to donate sums of money in order to help sustain a given project or as remuneration to the filmmakers since they have provided the audiences with free access to their films. Peter, an independent filmmaker and digital entrepreneur based in Edinburgh, explains how he appeals to the people who choose to download or stream his film from his dedicated website:

“Reciprocity is inherent in people, I think. If you offer them something freely, they want to reciprocate; it’s just natural like this... Giving them a little nudge also doesn’t hurt I guess. On the website I simply ask that if they enjoyed the film they can consider buying me a cup of coffee. And the donations start coming in and keep coming in... No, definitely not everyone contributes. I think it’s more like 10% of the people who watch the film that decide to donate. It’s very hard to calculate though.” (Peter G., interview, October 24, 2013).

He also points out that filmmakers and creators in general, should make it easy and straightforward for viewers to donate money to them when they are inclined to do so. This means firstly having obvious and clear links to the donations page and also providing possibilities for all possible and diverse payment methods on their website, from PayPal to credit and debit cards, anyone who is willing to donate should be able to do it with just a few clicks.

#### **- Crowdfunding**

The crowdfunding strategy or threshold pledge system, effectively combines the two previously mentioned techniques of voluntary donations and provision of merchandise, but in a new, more organised form. It enables audiences to

contribute to a project with whatever amount of money they choose and in return all the “investors” get rewards such as related products, for example T-Shirts and DVDs, or have their name mentioned in the credits, or even get a more active role and a voice in the production of the film. The project leaders decide on the amount of money that they want to set as their goal and they have a specific length of time until they reach it. If they raise the set sum within this limited time then they get all the money they raised, while if they don’t reach the full amount, certain crowdfunding platforms declare the pledge as void and no money change hands. There are different types of crowdfunding that are being used depending on the contributions of the audiences, the stage of the project and the influence of the investors.

The term “crowdfunding” derives from the concept of crowdsourcing, which was first coined by Jeff Howe, contributing editor at “Wired” magazine in 2006, to describe how certain companies and institutions may outsource a function that was previously performed by their employees to an undefined and generally large network of people in the form of an open call. Nicolas explains that crowdfunding is similarly an open call, usually via the internet, for people to network, make a collective effort and put their money together in order to support the efforts of other people or organisations towards the completion of any type of project. He asserts that crowdfunding is particularly helpful for filmmakers who cannot get funding for their films through the usual ways of selling distribution rights, private investment through production companies or acquiring public funding. And once more, crowdfunding assists in building and solidifying a community around an open content film:

“We can now use the internet to bypass all these intermediaries and ask instead people from all over the world to be our investors. And it is not just about finding the funds to make your film. It is also a way of building a relationship with your audience. It’s a new and more horizontal type of interaction and communication between filmmakers and audiences. You don’t have any of the usual intermediaries between yourself and the public. It’s more direct and honest... For the Cosmonaut we didn’t use any of the usual crowdfunding sites but we launched our own campaign through our website. And it was very, very successful we raised more

than double the money of our original goal.” (Nicolas A., interview, May 17, 2011).

He also admits though that there are also associated problems with crowdfunding:

“Many films actually have to wait for up to six or seven years for production to start. This is the main drawback when relying in micro-donations. And this is why we decided to use it more for creating a community and keeping it active and involved in the project rather than just for financing. So we set the minimum contribution to be fairly low, just 2 euros, and in exchange we offered a welcome pack with stickers and pins and certificates and also we put each name on the credits of the film. For higher contributions there were even more options for products from our online store.” (Nicolas A., interview, May 17, 2011).

Nicolas claims that in his experience one of the fundamental benefits that crowdfunding provided for his film is assisting in generating publicity or “word of mouth” through the people that became its micro-investors.

Crowdfunding has become increasingly widespread after the launch of dedicated platforms such as Kickstarter and Indiegogo. Kayle explains why people supported his Kickstarter financed project:

“People are not simply buying a product, they get excited about a project and they want to feel part of it, they want to help create it in any way they can, even in a small way. It's no more about buying a thing, it's about taking part in a shared experience and that's far more important.” (Kayle N., interview, December 12, 2011).

Timo explains how he launched his crowdfunding campaign for his new film on seven different crowdfunding platforms in order to raise 300,000 euros but also so that he could compare the available services and possibly find the best crowdfunding platform for filmmakers:

“We used our Facebook and Twitter fan pages to find suggestions on crowdfunding platforms and we originally chose 10 of these platforms but we had to exclude three. FansNextDoor refused outright to set up our project to their service; Kickstarter needed us to set up Amazon Payments which we couldn't do because we are based in Finland, not the US or the UK; and Pozible actually kicked us out of their system when



they found out that we were using other platforms too and not exclusively Pozible. That was frankly very annoying... The other platforms were: IndieGoGo, Flattr, StartNext from Germany, Interactor, Verkami from Catalonia, Sponsume and RocketHub... They were all very helpful. IndieGoGo chose us for their Projects of the Month, Verkami sent press releases to Spanish media, Interactor helped us plan the strategy. They've been great. Communication with these platforms is crucial because it helps you understand what is unique about what they offer and how to adjust your strategy to make your project more interesting... The main point is to research the platforms you're using for crowdfunding and choose carefully because each of them has different unique qualities and it seems that locality has a lot of advantages... Essentially crowdfunding platforms are just elaborate social tools and they're as good and interesting as the projects on them, not the other way around". (Timo V., interview, July 13, 2011).

There are also some filmmakers who point out that there is a learning curve for creators using online tools and that they should not assume that the whole process is straightforward. Instead they should experiment with different configurations to find out what works best for them. Learning by doing and through trial and error is therefore seen to be relevant for all digital tools for creators: from open licenses to crowdfunding strategies and beyond. Hugh warns that creators should not assume that there are no skills involved in employing crowdfunding successfully:

"You usually hear about projects that managed to reach and surpass their financial goal. But you don't hear about the great majority of the projects that were posted on Kickstarter and went completely unnoticed. Artists think that it is enough to put their idea out there and people will magically support them en mass. The thing is, you have to know how to use such a platform, as you have to know how to use all technological tools. Social media are no different, you have to experiment and you need to do a lot of market research. In order to sell your idea you need a properly planned profile page with embedded rich media and you need to get your point across in the first minute. Rewards are also very important as is adjusting them depending on the level of funding." (Hugh H., interview, October 21, 2010).

Peter also warns that crowdfunding in itself is in essence not as novel as many people claim and that in many ways it is a trend that will probably not have any long term or sustainable effect in filmmaking or other creative activities:

“People are very excited about crowdfunding at the moment, though it's not really something new, it's just that there is more talk about it at the moment, there are more tools. This has been going on for quite a while but not through specialised platforms. Franny Armstrong<sup>28</sup> kind of claims that she invented this whole stuff, which is not true at all. It's something that has been happening for quite a long time but probably the biggest success before that was the Brave New Films with Greenwald. He made “Iraq for Sale” entirely out of donations from his audience and he did not use a platform, he just emailed everyone in his mailing list and asked for some money... I wouldn't be surprised if we get crowdfunding fatigue before too long. It could make you sick if you'd get an email every so often from everybody you know saying can you give me 10 dollars for my new film.” (Peter G., interview, October 24, 2013).

There is indeed a lot of hype surrounding crowdfunding for many and diverse projects but such financing strategies are by no means guaranteed to be successful. What is more, it can be argued that instead of making gatekeepers and intermediaries redundant, it simply introduces new intermediaries, such as the crowdfunding platforms' providers, who may be more indirect in how they exercise control over projects than the intermediaries of the mainstream industry, but they definitely still do have control over them. The power inequality between creators and platforms' providers can also be traced to the fact that while crowdfunding platforms rely on the advertised projects to build value for their services, most of them offer very little in return to the creators.

Crowdfunding is indeed as much about funding as it is about marketing and it works much better for projects that are more likely to have groups of people rally to their cause. Especially for open content films the process of making the film is equally important as the film itself when it comes to its promotion and marketing. Having a great story to tell about crowdfunding achievements and mobilising communities can get a lot of attention for filmmakers, perhaps more than the subjective value of enjoying the film or not. Given how open content filmmakers' primary orientation is not to seek profit from their films but to build a brand and a reputation, it is a much more important achievement to

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<sup>28</sup> Franny Armstrong made the film “The Age of Stupid” in 2008. It is a british documentary about climate change and has been regarded as a very successful case of non-traditional film production, funding and distribution. The funding of the film's budget relied on crowdfunding and the shares of the film were bought at a minimum price of £5,000

have a successful crowdfunding campaign which would demonstrate their proficiency in using online tools and their capabilities in community building.

#### **- Indirect Revenues from Services and Platforms**

While the formerly mentioned models of revenue generation may work effectively in certain cases, they are not economically sustainable in the long term, nor are they suitable for filmmakers who do not have a community or a fan base to support them. Financial remuneration is not a priority though for open content film projects that tend to adopt a loss leader strategy, offering their films freely but expecting revenues from other streams. Timo explains:

“We were never after making big money with Star Wreck. What we wanted was to get the attention of investors and possible partners, so this is basically our business card.” (Timo V., interview, July 13, 2011).

Consequently, films become the openly available content, which is used to increase exposure and attract attention for their creators, who can now promote their “brand” and expertise not only in filmmaking but also in other digital media related domains. Open content films are therefore essentially a showcase of the creators’ skills, as well as a promotion for their innovative online platforms and services. Filmmakers’ innovations in such online platforms and services extend to the development of online distribution platforms, 3-D graphics engines, film production companies, crowdsourcing platforms and consultancy services for community building. Open content filmmakers appear to be more active in this type of practices compared to filmmakers who are not using CC licenses to freely distribute their films. Indeed out of the 19 participants that have used Creative Commons licenses for their films, 13 were involved in such projects and most of them considered their freely available films as a long-term investment and an advertisement of the skills and creativity that were needed for their realisation. Correspondingly, out of the 12 independent filmmakers who were not using an open license for their projects, just 4 were involved in launching an online service.

This type of business model is very similar to the IT industry innovation model and more precisely the service-based model for open source software where offering a software freely becomes the vehicle to promote the uptake of charging services such as technical support, training or consulting. Below we examine four different types of online platforms that participants are involved in:

### **Blender: A 3-D Graphics Engine**

Ton has worked in the production of three CC licensed films: “Elephants Dream” (2006), “Big Buck Bunny” (2008) and “Sintel” (2010). All three of them are animated short films produced with Blender, a 3-D animation and computer graphics software. Blender is a free and open source software developed by the Blender Foundation, a non profit organisation. Ton says that “Elephants Dream” was the very first open content film to be completed:

“It is not just that we used a CC license for the film, we used the most open CC license, Creative Commons attribution. And we also licensed all of the film’s files under Creative Commons and the whole project was completed using Free Software.” (Ton R., interview, October 23, 2011).

Ton explains that the film was made in order to demonstrate the capabilities of Blender and open source software in producing high quality films and as a means to actually test Blender’s limits and develop further features. He stresses though that it was the mutually beneficial co-operation between artists and software developers that made “Elephants Dream” attract wide attention and positive reviews.

### **VODO: An Online Distribution Platform**

Jamie is an independent filmmaker, digital rights activist and although he chooses not to license his own films under Creative Commons, he still works with people who use the licenses and he integrates CC licensed content to his own business model. He is also one of the founders of VODO, an online service aggregating and distributing CC licensed films through peer-to-peer technology,

but also, and most importantly, distributing paid content like bundles of thematically similar films, games, music and books. He explains:

“VODO is a crossmedia distributor offering the best indie culture can offer. We want to build new revenue models for digital content that can reach customers all over the world... Sometimes this content is free to share and other times it isn’t. Often we tie together paid and free to share content with thematic similarities through our indie bundles. These are time limited and they can also be curated by well known names in the indie world. And the prices are always very, very reasonable, there are usually many tiered options to choose from, for different pockets and motivations.” (Jamie K., interview, June 12, 2011).

VODO aims to assist creators distribute their work effectively by tapping into an extensive community of customers looking for engaging, independent content. Jamie believes that VODO is a social hub for independent filmmakers, as well as for their audiences and connecting these two groups is where VODO’s value lies.

### **Wreckamovie: An Online Production and Crowdsourcing Platform**

Timo is one of the creators of the open content film “Star Wreck: In The Pirkinning”, a parody of Star Trek which is licensed under a Creative Commons, Non Commercial, Non Derivative license. Timo explains that his experience in producing “Star Wreck” motivated him to launch the Wreckamovie platform in order to facilitate other filmmakers interested in collaborative strategies for film production. Timo explains:

“Wreckamovie is an open online platform designed to facilitate collaborative film production. It allows creators to set up a film production and find a community to collaborate in, and it allows people interested in the creative process to network and become collaborators in other people’s films... We don’t differentiate between professionals and amateurs, we are all enthusiasts.” (Timo V., interview, July 13, 2011).

He admits that their approach bears similarities with open source software development, as they encourage a granular and modular style of film production where the entire process is broken down to many small and specific tasks. In this way they hope to facilitate people from all over the world to contribute their diverse skills and expertise to different film projects.

## **Distrify: A Flexible Suite of Digital Tools**

Peter is an independent filmmaker based in Edinburgh and he is also the founder of Distrify, a flexible suite of online tools for film production and marketing. He explains:

“I just want to make clear that Distrify is not a new platform, it’s a toolset that can be embedded in other platforms and websites and it is used for social media marketing with sales and distribution built in... It works best for the new generation of filmmakers who actively engage with their audiences online and through social media. Distrify is the best set of tools to ensure that their engagement converts to sales.” (Peter G., interview, October 24, 2013).

Distrify’s widget can be used anywhere on the web, like on forums, blogs and websites and it makes finding or renting a film very straightforward and simple. It gives access to the films’ trailers and it can also provide information about upcoming screenings. Distrify allows audiences to share a film’s trailer further and anyone who shares gets paid a share from the sales that it generates as an incentive to generate even more publicity. Peter explains that Distrify also compiles the statistics for filmmakers and also gives them the mailing list data, which can be very valuable resources for future market research and advertising for the filmmakers.

We can therefore witness how adopting a Creative Commons license for independent films can essentially promote a project, and the filmmaker that produced it gains influence within the reputation economy of the online environment. Such projects therefore can act as a “portfolio” for their creators’ expertise: They are meant to demonstrate the filmmaker’s abilities in a different, often related, domain and draw attention to online services and platforms targeted towards either the audience or other filmmakers. In this case open films function as examples of a platform’s functionality and capabilities, while open content filmmakers aspire to become themselves leaders in digital innovation, assuming the position of the new intermediaries or enablers of the

digital economy, providing the virtual infrastructure for production and exhibition of films by other creators.

## 5.5 Production of a CC licensed film

All participants in this research agreed that digital technology tools have made it considerably easier and cheaper to produce a film. Filmmakers can edit their film, add sound and produce special effects on their home computers and through open collaborations. This has made possible to produce films on a very small budget and using DIY approaches, which would otherwise be impossible. Justifiably most filmmakers are very enthusiastic about the prospects opening up to them through the use of digital technology in film production. Michelle, a young digital artist and open content filmmaker, explains:

“Traditionally, films were created by a tight network that was working together towards a singular vision. The film was only released when its owner could control how it would be received. So the information in film has not been free. I truly believe that the film industry fears the open source model for film production, but it is the creators that are going to be rewarded. Digital technologies are revolutionising how producers and consumers interact and niche markets are easily reached. So there has never been a better opportunity for film creators to publish and distribute their own work independently.” (Michelle H., interview, January 25, 2011).

Simon also believes that producing a film with a very small budget would have been impossible without the current availability and low costs of digital technologies:

“From production to marketing and distribution the internet in combination with low cost availability of high quality production equipment made this project not simply possible but a financial success even. The footage was simply stored on a 250 Gigabyte external hard drive which now costs less than £80. The once prohibitively expensive high definition video camers were borrowed and the editing software, of course, downloaded. All in all the film definitely cost less than £2,000 and it has been downloaded by over two thousand internet users in its first day of release. The film’s topic is also its business model, where the lines between professional and amateur media production and distribution blur.” (Simon K., interview, May 14, 2013).



It appears that for independent filmmaking, digital technologies contributed to a significant breakthrough and made film production a much more accessible enterprise.

Jenkins (2008) describes transmedia storytelling as storytelling happening across various, multiple platforms and devices, where each instalment of the story contributes unique elements in order to create a rich, fictional universe for the viewers. Using different platforms create diverse entry points or gateways for the viewers as the material offered through them does not overlap but can stand as a complete work in their own right. The viewers can then decide the level of involvement they choose for a transmedia story and immerse themselves within them. Nicolas claims that he took inspiration from Henry Jenkins to use transmedia strategies for the production of his film "The Cosmonaut". Other independent filmmakers also agree with Nicolas that transmedia represent for them a new form of storytelling that allows for more experimentation and imaginative creation and this is why they are eager to explore such novel forms of creative expression. Nicolas also feels that use of transmedia gives him creative freedom to tell a story without being restricted by a specific format and conventional time limitations. But it is also liberating for the viewers who can choose what parts of the story are more interesting, how much they want to be involved and how much they want to see:

"So there is this new paradigm of consumption, and new habits and there are new visual forms that the viewers are still adapting. So we also have to change the paradigm of production and turn the traditional film into a transmedia project, and build the story through different platforms: text, mobile, photos, audio and pictures about the film". (Nicolas A., interview, May 17, 2011).

He also explains how the different formats he uses are connected to additional revenue streams:

"They allow to a certain extend a direct economic benefit from the contents in a wider way of what it would normally be possible". (Nicolas A., interview, May 17, 2011).

He points out that in this the way he can have commercial brands involved with the project and further income will come in the form of advertising and product placement. While the film is the nucleus around which all the other content will orbit, related transmedia content is created in parallel to the main film and it offers key points to the development of the story. Some of these transmedia plans, as Nicolas explains, include the development of iPhone applications, Facebook applications, exhibitions, Spotify collaborative playlists, a graphic novel, an Alternate Reality Game and flashmob events.

We can therefore observe how open content filmmakers feel that the use of digital technology tools do not simply make filmmaking production more accessible but it also offers opportunities to explore innovative forms of creation, to experiment and develop expertise in various digital media production processes, therefore enriching the whole filmmaking experience both for the producers of open films and for its audiences.

## 5.6 Distribution of a CC licensed film

By using new distribution technologies and free services available online, filmmakers can distribute a film to a very large audience without any additional costs or effort than if they were sharing it with just one other person. So filmmakers feel that using the internet to distribute a film is a process that can scale up with great ease compared to older methods that required the production of physical objects like video tapes and DVDs, which made the cost of distribution increase with each additional item that is produced and distributed. There are many online film distribution projects that can be used freely and are committed to the same principles of openness, participatory culture and sharing of knowledge and resources as they take inspiration from the free software movement.

A very good strategy is to release a film in different formats for different types of viewing experiences. Anne, an open content filmmaker who is also very interested in open technologies for filmmaking, mentions that filmmakers can first upload a high definition copy of the film so that the quality will be good enough to be screened on a television set or through a projector, either directly from a computer or after it is transferred to a DVD. Smaller and more compressed files can be created to be viewed within browsers or for direct downloads. Creating a torrent file for a film is an essential step so that it can be shared through peer-to-peer networks.

Beyond the technology considerations for distribution of open films, the use of CC license as part of the legal strategy of OCFs becomes increasingly relevant during the distribution phase. The licenses spell out for the audiences which uses are allowed and which are reserved. But regardless of the exact type of CC license, all works licensed under CC are distributed and reproduced freely. When it is allowed to freely distribute and consume a film, this creates the potential for the film to reach a larger number of people. OCFs mainly base their revenue model on selling tangible products with added value that cannot be copied or on the launch of innovative digital services and platforms. So the more

people watch a film, the more people will also be convinced to participate in the experience and acquire related physical goods or use the services and expertise of the filmmakers. However, the precise terms of the license are crucial when users want to do more than simply watch a film. When there is the intention to produce derivative work or any indication of commercial use, filmmakers and audiences step into a more grey area with regards to the legality of their actions. This situation can become even more of a minefield when we take under consideration that a project can have different licenses for different versions of the film, or for different assets of it.

Kayle explains how digital technologies influence film distribution:

“In the mainstream industry, it is the distributor who manages how and when the audience will access a film. But now the internet has given this old paradigm a new look, giving the users control over how and when to enjoy their content.” (Kayle N., interview, December 12, 2011).

OCF projects usually premiere on the internet and they are often distributed through peer to peer networks, but as there are no exhibition windows they can be broadcasted on TV, have a cinema release and DVDs available at the same time. Kayle continues:

“What usually happens is you first have a theatre release, then there's the DVD, followed by Video on Demand and subscription television until finally you have free television. But this model, not only doesn't work any more but it is simply unrealistic. The internet has made it irrelevant and the audiences now have different expectations.” (Kayle N., interview, December 12, 2011).

Many other filmmakers share Kayle's enthusiasm for the promises of digital film distribution. Michelle explains:

“When you distribute your films directly to the audiences, without any industry intermediary taking a cut, there is more money going directly to the artists. In our times when the rules are constantly changing and these rules dictate where information can and cannot go, why not combine film with the open-source ethos? If a person wants to download a film or even remix it, they are going to do it, so lets let them do it. By releasing this control, a story is created about the film, as well as a participating

community instead of a passive audience.” (Michelle H., interview, January 25, 2011).

Besides of internet distribution, recently new platforms were launched that allow to take advantage of community dynamics for bringing films to local cinemas. The most popular platform of this sort is Tugg<sup>29</sup>, where users can become “promoters” of a film and set up their own film projection events that they then promote to their friends and community. If enough people are convinced to reserve a place and the required ticket threshold is reached, then the event is confirmed. Part of Tugg’s mission is to help independent filmmakers get their films in front of a theatre-going audience. Timo describes his experience with Tugg:

“Of course we knew that Iron Sky already had its cult following. So it was easier for us to circumvent traditional distribution channels and mobilise fans who had already helped fund the production. The result was that 70 Tugg screenings took place in 56 North American cities over just four months.” (Timo V., interview, July 13, 2011).

But besides such innovative distribution methods that utilise digital technologies to bring an open content film directly to the audiences, open content filmmakers very often also choose to distribute their films through the mainstream industry’s intermediaries. The only catch in this case is whether mainstream intermediaries will be interested or see a potential of economic profit from a film that is also available freely online. Josef believes that they should:

“If you managed to get an open content film off the ground, then that’s proof enough that you have something valuable to offer. So your film will also be available online. Come on, is there any film that is not available online right now? At least with a Creative Commons license you embrace it and you make it available online legally.” (Josef M., interview, February 2, 2013).

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<sup>29</sup> <https://www.tugg.com/>

Simon explains that the television networks that financially backed his film, thought he was crazy for suggesting to leak his own film on Pirate Bay before it was even broadcasted:

“The distribution model was an experiment but it worked very well. When the film premiered on the TV stations it had a massive viewership. It was also screened at the Berlin International Film Festival where it was a huge success. It opened the festival’s documentary section... And there is also the option to buy the DVD which includes deleted scenes and bonus material”. (Simon K., interview, May 14, 2013).

Timo also opted for a distribution strategy that combined novel digital delivery with traditional distribution deals:

“We eventually sold rights to television and it was broadcasted on TV channels in Finland, Belgium, Italy and some other countries. Most of the money that we made came from selling DVDs. About a year and a half later we also made a distribution deal with Universal Pictures for selling DVDs in Scandinavia.” (Timo V., interview, July 13, 2011).

We can therefore observe that open content filmmakers do not limit themselves to the digital environment when it comes to the distribution of their films. They certainly take advantage of all the possibilities that digital media have to offer them, but they also utilise mainstream industry intermediaries and traditional distribution methods. So contrary to some of Creative Commons proponents’ declarations about a complete break with the past practices and the dawn of a revolutionary different new era, open content filmmakers combine new and old media practices in a parallel and complementary manner.

## 5.7 Building Networks through Creative Commons Film Festivals and Private-Public Screenings

Adopting a CC license is meant to facilitate the exchange of digital resources within the information economy. Creative Commons advocates often describe the licences as a “legal patch” for the networked era, so one could imagine that their influence and the challenges they pose, remain confined within the digital realm. But this is not the case. As this section aims to demonstrate, open content filmmakers extend their activities to the offline world to include practices such as organising public-private screenings and film festivals, which are often thought of as the exclusive privilege of the traditional, mainstream film industry. Such creative practices help filmmakers establish their position beyond online networks, through face-to face interaction, in a landscape that combines and re-imagines online and offline practices and cultural production and consumption. But they also strengthen Creative Commons’ position as an organisation that facilitates and assists creators not only with regards to their digital strategies but also in their offline creative endeavours. Matthias, is an open content filmmaker who used public-private screenings to promote his Creative Commons licensed film, explains what the licenses represent for him:

“Creative Commons made it possible to achieve the vision of universal access. They provided a free, public, and standardized infrastructure that is there to create a balance between copyright laws and the reality of the internet... Their concept is a very serious, democratic, non ideological alternative to the conventional ideas of the ruling film industry.” (Matthias M., interview, February 6, 2012).

Matthias describes the business models that Creative Commons licenses enable as “non aggressive” and while he stresses that open licenses reflect the ways we access resources online, he is simultaneously very eager to experiment with more personal, face-to-face interaction by calling for public-private screenings to take place. He sees public-private screenings as:

“It is an alternative to the expensive cinema system. It is a simple and charming way to connect small independent films with their audience.” (Matthias M., interview, February 6, 2012).

So, the significance of face-to-face interaction and the re-enforcement of a common identity remain as a goal for independent filmmakers.

Therefore, in certain cases the use of Creative Commons licenses becomes the mobilising element for the organisation of such events, especially given their widespread popularity. This is something that does not occur with any other open content licenses, as they tend to be much less recognisable and more resource-specific. Capitalising on Creative Commons' efficacy in establishing and maintaining online communities, film festivals and public-private screenings demonstrate how a community built upon digital exchanges and needs begins to extend its network by reaching audiences offline, focusing on physical interaction. Filmmakers invest energy and resources in strengthening their position within these newly formed but highly promising hybrid networks. They perceive that filmmaking and cultural production in general, has been reconfigured through digitally enabled affordances, such as accessible filmmaking tools and practices like open collaboration. But they also want to prove that this reconfiguration goes beyond the digital economy, extending to the offline world and thus challenging all aspects and established ideas about cultural production and consumption.

Below I examine in more detail the organisation of the Creative Commons Barcelona Film Festival (CCBFF) and the uptake of Public-Private Screenings as adopted by open content filmmakers:

#### **- "Creative Commons Barcelona Film Festival"**

A legal feature like a copyright license is something that few, if any, people pay attention to when choosing films for organising a festival. In this case the specific licenses take centre stage and become the focus for an increasing number of festivals being organised around the world. Creative Commons becomes the common link that connects creators, contributors, users, organisers and audiences. Film festivals are more public and visible events than public-private screenings. To put together a festival, organisers come in contact



with people from the Creative Commons' affiliate network in the specific country, and representatives of public funding bodies. A Creative Commons film festival can therefore help filmmakers reach out to wider audiences. They can connect and interact with their peers, policy-makers and other relevant actors; but also they serve to re-enforce their argument that their projects are a viable and real alternative to the mainstream industry established structures. The first festival to build on this idea was the Barcelona Creative Commons Film Festival (CCBFF) launched in 2010 with the slogan "Copy This Festival". The organisers were calling for interested people in other cities to copy the structure of the festival while they would provide all the help they could. And indeed after the launch, other Creative Commons Film Festivals were organised in different countries based on the same principles, either under the "Copy This Festival" brand or presenting a slightly different approach like the "Nordic Creative Commons Film Festival".

Louis, one of the organisers of the first CCBFF explains that he first heard about Creative Commons licensed films when he came across the open content film: "Nasty Old People". The film was Creative Commons licensed, it had a Pirate Bay release and used crowdsourcing for additional features such as subtitles, allowing many forms of future collaborations. He also points out that while in the beginning there were very few Creative Commons films, in recent years they have multiplied, which also makes the organisation of such film festivals much easier. Louis explains how Creative Commons has by now created a large movement of supporters in Spain:

"The first Spanish film to use a CC license licenses was: "To shoot an elephant" by Alberto Arce. It was a Spanish documentary film about Israeli bombings in the Gaza Strip where many Palestinians got killed. The Spanish TV didn't want to show the bombings so the filmmaker decided to take it upon himself to show it to the world and then decided to do a documentary, and naturally his goal was to reach as many people as possible by organising global screenings. What that means is that the film was being uploaded online but it was also possible for anyone to download the film and organise their own screenings. So it was mainly due to Alberto Arce that Creative Commons films became very popular especially in Spain and this is also where the idea for the Barcelona CC

Film Festival came from. This was the moment when everything increased.” (Louis R., interview, May 11, 2012).

It seems then that there is a powerful story connected to grassroots politics, which justifies the dynamic uptake of the licenses by Spanish filmmakers.

The first filmmakers were apparently a big catalyst for the dynamism that was developed later. Louis recounts how in Spain “To Shoot an Elephant” was one of the first films that really touched people and consequently made them understand why the creator was using these licences. After the release of the original film there were four documentaries made as remixes of this documentary, all licensed under Creative Commons. For the team behind CCBFF that was a very meaningful move:

“Sharing is an integral part of the film viewing experience. We watch films on the big screen and we share with strangers tears and laughter. And we offered this possibility during CCBFF. All the films that are screened during the festival you can watch them at your own home but you come to the festival because you get a chance to talk with the director, to get to know the films more and you are going to be in a venue with likeminded people, enjoying cinema.” (Louis R., interview, May 11, 2012).

It is obvious that the social interaction between audiences and creators is still an important motivator for making films and organising festivals around them.

The team which organised the first Creative Commons Film Festival was comprised of four people: one in charge of communication, one for programming, a co-ordinator and finally the fourth member was in charge of the social and Creative Commons network. Their goal from the beginning was firstly to continue with organising similar events but also to get more people involved and encourage them to copy their festival, and in order to do this they needed to keep CCBFF as open as possible. Louis explains this aim:

“We are four people but if other people can copy our own film festival, we are going to be able to get much further. Barcelona is one city but if we allow the festival to be copied we will be in 1000 cities. It may not be happening yet but this is our aim.” (Louis R., interview, May 11, 2012).

The first copy of the festival appeared in Madrid and the original team was also involved. But they point out that it was not exactly the same, it was a derivative festival with different films, different people, with other seminars being held simultaneously, but based on the same theme. And it was after the Madrid festival that other people started “copying” it in other cities in Spain. The original team provides them with anything they may need: the films with the subtitles, an already developed website, editable posters, commercials etc. Louis clarifies:

“So if you want to have the festival in a small village you can copy everything about the festival and organise in your own location. But you must not charge for tickets and be a non profit organisation. We are a non profit and we want other people, as well as we do, to copy it in the same way.” (Louis R., interview, May 11, 2012).

He stresses that as they have a very wide online coverage, it is absolutely crucial for the festival to be perceived under a positive light and this is why they emphasise the non-commercial aspect of the event.

They reckon that when a creator becomes well known in the non-traditional media, then they will also be well known in the traditional media. As their goal is to change the current situation of film production and consumption:

“If you want to change things in the traditional industry it is important that at least some part of the industry acknowledges you as a good speaker, that you are in a good position.” (Louis R., interview, May 11, 2012).

The next goal is to manage to bring together an even larger audience:

“A festival, a good festival needs to have a lot of people. So you need to make an effort in this regard and have good communication, talk to people, be interested and interesting. We need to have people if we want to change things, because our aim is to change things, to change the industry, to change filmmaking and to change the point of view of people more corporate orientated to become more open minded.” (Louis R., interview, May 11, 2012).

Working to this effect, the previous Creative Commons film festival was held at the biggest, more famous museum in Barcelona, the MACBA museum, since according to Louis, choosing the right place also helps bring people to the event, and increase its popularity. Increased popularity creates strong communities and this can be translated to financial benefits through the use of techniques like crowdfunding. The team indeed relies both on crowdfunding and public funding to support their activities. And it seems to be working well until now:

“We want other people to copy the festival and all of us together we will be a network and all together we can do things stronger. We have now 35 derivative copies in 18 countries, most of them are in Spain and Latin America but also in other parts of Europe. And this idea of copying the festival, it helps in other countries to understand about the films under Creative Commons licenses. And big things can happen because of these small things. Everything is about copying and remixing and applying ideas in your own way. This is the way that culture works and this is how everything should work.” (Louis R., interview, May, 11 2012).

#### **- “Private - Public Screenings”**

Some of the filmmakers who use Creative Commons licenses extend their distribution outreach by inviting the audience to host what has been termed as a “Private-Public Screening”. Such screenings can be thought of as an alternative to a theatrical release but targeted towards a smaller audience. They attempt to re-appropriate the social aspect of attending a film screening at the cinema, as it is especially this social function that is often thought of as lacking from digital practices around consumption of cultural resources. Like organising film festivals, calling for private-public screenings demonstrates how both digital and non-digital aspects of open content film production and consumption co-exist and compliment each other; and how creators extend the applicability and relevance of CC licenses by building concurrent support mechanisms and networks offline.

The concept behind public-private screenings is straightforward. Vincent M. explains:

“The filmmaker calls the audience to apply for private-public screenings by posting a call online, on the project's webpage and on relevant social networks, through say Facebook or Twitter, where it would have the most chances of reaching its target audience. Anyone can host a screening if they are interested and share the film with their local community... There are four basic principles that the audience need to follow when they organise their own private-public screening: Firstly, they need to confirm or verify their event by the film's creators. Second, the screening needs to be public, also they cannot charge any fee for entrance and finally, they need to have at least five participants for the screening to proceed.” (Vincent M., interview, June 27, 2011).

Vincent explains that although these are the main guidelines that need to be followed every time there is a public-private screening, the requirements may change slightly between different projects. Still, the main idea is based on the previously mentioned four principles, allowing for social interaction around an open film, without any obligatory financial exchange to take place. These DIY screenings can take place in any location that the participants find convenient. Usually they take place in somebody's home but it could also be at a cafe, a bar or any other available venue. As soon as hosts indicate their intention to host a screening, they receive a link where they can download the film in High Definition with all available subtitles or extra features. They can then screen the film through any medium of their choice, like burning it on a DVD and using a DVD player or playing it directly from their computers.

Private-public screenings run for a specific period of time, usually two or three months and they can take place anywhere in the world. During the months that the call is active the confirmed screenings are displayed on a dedicated map, which can be used by anyone to discover whether there is an event taking place around their area. The screenings are therefore “public” events, as they are potentially open to everyone who wants to attend and they have the status of being officially approved by the film creators. The filmmakers actively encourage the hosts of the screening to welcome anyone who asks to be invited

to the screenings, but as they are hosted by “private” people, there are also provisions to allow for more restrictive conditions. Vincent recounts:

“For example the organisers of a screening may want to have full control on who will attend, especially if it is organised in their own private homes. So in these cases they have the option to communicate directly and privately with the people who have registered an interest in attending the screening... Also, it could be that the available places are very limited and the organiser knows that it will reach maximum capacity with simply their immediate circle attending, so then they have the option to mark their event as fully booked as soon as they announce it.” (Vincent M., interview, June 27, 2011).

Vincent is trying to make the point that private-public screenings are a flexible concept and as long as people respect the philosophy behind the four basic principle, they are free to tweak the concept and add their own innovative ideas.

Vincent was indeed the first open content filmmaker to experiment with this type of distribution, for the film “An Island” that he recorded with the Danish music band “Efterklang”. The film was released online in January 2011 and called for private-public screenings to be held during February and March 2011. Within the first three days there were more than 100 private-public screenings confirmed, and by the final day a total of 1,178 screenings had taken place all over the world. Vincent admits that this number exceeded even his most wild expectations:

“We were just hoping for 200 screenings when we came up with this distribution method.... We are extremely grateful to all these people. We have received a lot of photos from screenings across the globe. Looking at these photos gives us a feeling of community in a very big and global world.” (Vincent M., interview, June 27, 2011).

Vincent continued to use the distribution system of private-public screenings for his next project “Esperando El Tsunami”, and very soon more open content filmmakers were following his example. Matthias took up this idea and as an additional incentive, he also asserted that he is willing to attend in person as many public-private screenings of his films as possible. This is how he explains his views for such events:

“We loved the idea that our film could become part of a new, advanced and free culture that allows artists and audience to come together without the complications and obstacles of obsolete market structures... We want to pursue this new and exciting cinematic experience, and we want to invite everyone to join in, to become a screener, host the film at your place and have fun.” (*Matthias M., interview, February 6, 2012*).

It is therefore obvious that filmmakers want to maintain a connection with their audiences and with their peers, beyond online interaction. They seem to predict that the future for cultural production and consumption will rely on multi-level participation and open collaborations, and they establish connections that will assist them to navigate both online and offline networks.

## 5.8 Closing Remarks

In this chapter we focused on the practical issues that filmmakers encounter in their everyday activities, the specific, local use of digital tools as well as their networking practices and participation in online and offline communities. Through the examination of the diverse strategies for production, distribution, marketing and revenue generation that they implement around their films, we can witness a thriving dynamism and extensive adaptability which places open content filmmakers in an advantageous position in order to respond efficiently and timely to changes in media and consumption practices, compared to the old and established film industry intermediaries. The innovation ecosystem that open content filmmakers develop through their practices, is based on processes that are dispersed across a wide range of actors and locales, as they attempt to take advantage of both established and novel strategies for production and distribution of their films. As business models in the digital economy remain in flux, filmmakers understand that they need to remain flexible and alert both to perceived changes in audiences' behaviour and to the re-alignments within the industry, while simultaneously continuing to experiment with different organisational configurations. But while we observe the patterns that emerge through the diverse and widespread activities of open content filmmakers, we also get a glimpse of conflicting interpretations, differentiations in approaches and tensions within their heterogeneous strategies, which would subsequently lead to more contentious issues and fragmentation that form the focus of the next chapter.



## **Chapter 6**

### **Fragmentation and Conflict in Open Content Film Projects**

#### **6.1 Introduction**

After explaining the strategies and organisational configurations around the implementation of the Creative Commons licenses in independent film projects, in this chapter we turn our attention to the frictions, conflicts and problems within open content filmmaking. We also identify the relevance of an often neglected group of actors, that of independent filmmakers who resist the licenses' adoption or non-users of licenses, and we investigate their understandings of the Creative Commons licenses application in independent filmmaking. Both adopters' and non adopters' understandings of the current situation for cultural creation in the networked, digital media start from similar viewpoints, stressing the importance of experimenting and innovating with technology and a general disappointment towards the mainstream industry and its traditional gatekeepers. But they nevertheless, come to widely varied conclusions with regards to how this situation could be improved and how they would best arrive to the implementation of a sustainable business model. Open content filmmakers debate the meaning of openness, audiences' participation, as well as the best ways to deal with various practical problems during open film production. Non-adopters of the licenses express concerns that Creative Commons and the Open Culture movement more generally, promote and allow a type of practices that lowers the standards of cultural production and can seriously damage creators' efforts to come up with a sustainable revenue model through the use of networked ICTs.

In section 6.2 we will examine how the open content filmmaking movement fragments around the significance and interpretation of openness in CC licensed

films. The Creative Commons organisation is part of a much larger movement for the promotion of digital rights, a movement that brings together different and diverse organisations, advocacy networks, activists and political parties. Many of these actors even within the same organisation have very different views on how to promote openness and related practices. More specifically in section 6.2.1 we will investigate how the various elements of the CC licenses can either contribute to or inhibit certain practices, and how the inclusion of the Non-Commercial and Non-Derivative clauses are regarded as problematic especially by the actors that are more ideologically driven towards open practices. In section 6.2.2 we turn our attention to the digital technology tools, standards and platforms that are used for film production and distribution. Whether these technologies are also based on Free and Open Source Software is a crucial consideration for certain filmmakers who advocate for the application of open methodologies in all aspects of digital filmmaking. Section 6.3 discusses the varying levels of audience participation and collaboration that open content films allow for. It presents the associated risks that stem from either an excessively inclusive strategy that would allow anyone interested to be able to influence all aspects of the filmmaking process; or, on the other end of the spectrum, by restricting participation to simply allowing free access and passive consumption of open content films. Section 6.4 explores several practical problems that open content filmmakers have to struggle with, and are related to either legal, technological or revenue generating aspects of open filmmaking. Finally, section 6.5 examines the interpretations and understandings surrounding CC licenses' application in filmmaking by low budget, DIY filmmakers who choose not to adopt the licenses, even when they sometimes offer free access to their films online. We can consequently identify three main clusters of reasons that lead filmmakers to resist CC licenses' adoption. We therefore note how some filmmakers regard Creative Commons licenses as irrelevant to their practices both online and offline, and only regard it worthwhile when a film actually addresses the niche market related to copyright activism; for other filmmakers the licenses are evaluated as a conservative response to the current digital copyright challenges; while a third

reason for rejection of the licenses is that they promote a pirate mentality amongst the general public and they therefore devalue creative content.

## 6.2 Debating the Meaning of Openness

Open Content Filmmaking is a branch of a larger, more general movement of 'Free/Open Culture' which seeks to translate the ideas that underpin Free and Open Source Software production to a variety of cultural content, in this case films and videos. There are however very different and even conflicting approaches on how this translation is to be performed. As we saw in chapter five, collaborative production, crowdfunding techniques and digital social distribution can be combined with reserving commercial rights, forbidding derivative works and co-operating with commercial distributors and intermediaries from the established film industry. In contrast to what is the rule for software, where projects must adhere to clearly stated freedoms<sup>30</sup> in order to qualify for the name of 'free software', there is a lot of ambiguity regarding which principles a film must follow to be considered part of the Open Content Filmmaking movement. Many filmmakers and Creative Commons advocates argue that the definition of "open content films" should be more flexible compared to open software. For them the use of a CC license is regarded as sufficient qualification for a work to be considered "open" and they claim that there is no necessity to come up with a strict set of rules that all films that want to be considered "open content" would need to follow closely. In contrast other creators and copyright activists point out that a more strict definition of openness is essential in order for the term to have a true significance, otherwise they warn that it will just end up being another superficial marketing label. Furthermore, they point out that certain self-proclaimed open content

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<sup>30</sup> The Free Software Foundation explains that for a computer program to be considered as a free software, it must provide its users with four essential freedoms: The freedom to run the program as they wish and for any purpose (freedom 0). The freedom to study how the program works, and to have access to the source code so that they can change it according to their own computing requirements (freedom 1). The freedom to redistribute copies of the original program to whomever they wish (freedom 2). And finally the freedom to distribute copies of the modified versions so that the whole community can benefit from the changes (freedom 3). Further elaboration can also be found on the GNU's website: <http://www.gnu.org/philosophy/free-sw.en.html>

films may, as a matter of fact, not contribute to the building of a commons at all but instead they may actually play a part towards its fragmentation, as the many different license variations are often not compatible, resulting in legal licenses' proliferation with no common ground to be combined or build upon each other. This is especially the case when films, or indeed any other resources, include in their licensing strategy the Non-Commercial (NC) or the Non-Derivative (ND) clause, or when they are created and based on proprietary technologies and standards. Ton explains:

"At the Blender Foundation we've been involved with open content since 2007. All our animations are licensed under the Creative Commons Attribution license and they are made using exclusively Free and Open Source Software. So you can say that we are pioneers in making a living through open software and open content. But for me an open business model is about much more than just using an open license. It is about transparency, accessibility and accountability towards your audience or customers before anything else. What is important here is to be open about every aspect of film production, to explain how all the internal processes work, how the costs are distributed, to share your revenue figures, everything... To label open business model any activity that uses a Creative Commons license is simply confusing and potentially misleading. I know many corporations that use CC licenses for various reasons but definitely not because they are interested in sharing or openness. How could anyone really think that using a Non-Derivative and Non-Commercial license amounts to an open business model? I definitely don't deny the value of CC licenses, even the more restrictive ones. What irritates me though is this push to regard doing business with CC as something so very special. It is not special, it's not a religion and it's not the only option, it's not exclusive. Let's just leave the artists decide when and whether to use them without judging their choices. Sometimes they work and sometimes they don't." (Ton R., interview, October 23, 2011)

We can therefore observe how some filmmakers emphasise that films, or even more generally resources, which are licensed under the more restrictive of Creative Commons licenses, do not involve any kind of collaborative production and they do not allow derivative works to be made so there is no kind of 'remix culture', the flagship concept of CC

licenses promotion, happening here. What is more, many such projects often also reserve commercial rights for mainstream distributors. Some of the more ideologically motivated interviewees, express the opinion that such projects free-ride on the dynamics of the open culture movement; while others who are motivated towards CC license adoption mainly for pragmatic reasons, point out that one needs to make compromises in order to develop a sustainable business model in our turbulent, digitally-disrupted times.

### **6.2.1 Openness With Regards to a Project's Legal Strategy**

Different combinations of the CC licenses' main elements serve different purposes as they lead to different legal results and are thus appropriate for the multitude of diverse strategies that independent filmmakers employ. We can therefore witness almost as many business models around the implementation of CC licenses as there are projects, while all creators stress the need to continually re-think and re-interpret the established paradigms of cultural production in an inventive and imaginative way. Consequently, experimentation both with different licenses and with different projects, play a central role in the filmmakers' endeavours. But the various types of CC licenses have also different implications for the various filmmaking stages and for the type of inclusion and collaboration that they facilitate. They could therefore either allow or inhibit varying degrees of participation for audiences and future users. As Felix points out:

“Saying that a film is licensed under Creative Commons does not actually mean anything. You have to explicitly mention the specific type of license, otherwise people will not know what they can do with this work. And that's even worse than copyright, isn't it? I mean, copyright is super restrictive, sure enough but in that sense it's clear. It warns people that they need to stay away, they can't re-use, modify, distribute, nothing. But when they say 'my film is licensed under Creative Commons', I reply 'And so what? What can I do with it? What are you saying that I'm allowed to do with it?' I mean they have to specifically mention the exact type of

license, otherwise nobody would dare touch something like that and risk being sued.” (Felix G., interview, November 12, 2011).

What is more, not all Creative Commons licenses are free licenses. When the Non-Commercial or Non-Derivative clauses are included in the license then the works that use them are not typically considered as essentially free or even open, although they are still regarded by some creators and the Creative Commons team itself as adopting a more open legal strategy compared to the “all rights reserved” of traditional copyright. We will now focus more closely on the two elements that create frictions in the open content filmmaking movement: The Non-Commercial clause and the Non-Derivative clause:

### **Non-Commercial**

The Non-Commercial requirement is indeed one of the most controversial features of the Creative Commons licenses, the main but not only reason for the controversy being the multiple possible definitions of a commercial use. Non-Commercial designated material leaves a lot of ambiguity as to under which circumstances someone would be allowed to re-use it. On the Creative Commons website the definition of a commercial use is as “one primarily intended for commercial advantage or monetary compensation”<sup>31</sup>. The stated purpose of this rather vague definition is so that it would not place detailed restrictions that would limit the uses of a CC licensed resource. But this approach also leaves room for confusions and misinterpretations, given that the use of a Non-Commercially licensed work depends “on the specifics of the situation and the intentions of the user”<sup>32</sup>. Gary points out

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<sup>31</sup>[https://wiki.creativecommons.org/Frequently\\_Asked\\_Questions#Does\\_my\\_use\\_violate\\_the\\_NonCommercial\\_clause\\_of\\_the\\_licenses.3F](https://wiki.creativecommons.org/Frequently_Asked_Questions#Does_my_use_violate_the_NonCommercial_clause_of_the_licenses.3F)

<sup>32</sup> *ibid*

how the inclusion of the Non-Commercial clause could halt the further distribution of the licensed work:

“I would think twice before using any material that carries the Non-Commercial clause. Even if I just wanted to re-post something on my blog or my facebook page. I mean, where does Non-Commercial stops and commercial begins? I’ve made advertising space available on my blog, like most people who use any sort of social media. Would that be commercial use? Maybe not but I wouldn’t risk the legal trouble.” (Gary W., interview, June 8, 2012).

Gary stresses that especially when it comes to NC licensed films anything other than simply watching it in the privacy on one’s own home could run the risk of license violation.

A Non-Commercial license still allows for a work to be re-distributed and, if there is not a Non-Derivative clause, it also allows for the work to be modified or re-mixed. Nevertheless, CC licenses that have the NC element are not free licenses and therefore they are incompatible with other free content. Nina identifies herself not only as an open content filmmaker but also as a free culture activist. She explains why she decided to forego the Non-Commercial clause in her use of the Creative Commons licenses:

“I want my film to reach the widest audience. It costs money to run a theater, to manufacture DVDs, to make and distribute film prints. It’s essential I allow people to make money distributing Sita Sings the Blues anyway they choose, otherwise no one will do it. So I did not go for the “Non Commercial” license. Share Alike is enough to protect the work from ever being locked up... A Share Alike license eliminates the corporate abuse everyone’s so afraid of. And it encourages entrepreneurship and innovation. So everyone wins, especially the creators” (Nina P., interview, November 11, 2012).

Nina also points out that as a creator she is not only a contributor of cultural resources but also a user of other people’s work, as she needs to rely on existing material both for inspiration and for the more practical



aspects of filmmaking. She therefore finds that Non-Commercial licenses are essentially as restrictive for her purposes as full copyright:

“I want artists to be able to make money within the free culture ecosystem. If you remix or build on existing culture why shouldn't you be able to accept money for it? Without any reward there won't be any incentive to participate and build on our free culture, if you are guaranteed to lose money while doing so. And free culture will remain a hobby for those who already have money and time on their hands... The cultural landscape is teeming with Non-Commercial restrictions and yet they call their work free culture or copyleft, which is even worse. I think some filmmakers just believe that free culture is cool but they still want to restrict freedom... You know Lawrence Lessig's book, 'Free Culture'? People look up to it but it is not free culture itself. It is under non-free, Non-Commercial license. But I think it set an unfortunate and confusing example. It just illustrates the absence of any guiding principles in the free culture movement.” (Nina P., interview, November 11, 2012).

Nina also explains how this trend of adopting a NC license is harmful for creators like herself because as the Non-Commercial element is so widespread, it has become practically synonymous with the whole suite of CC licenses. This means that people who see the CC logo automatically assume that the license is a Non-Commercial one. Indeed according to her website, Nina, one year after our interview and four years after the initial release of her film “Sita Sings the Blues” under a CC-BY SA, decided to change the CC license that she used to a CC-0, the CC license with no restrictions, which is synonymous to a dedication to the public domain<sup>33</sup>. This was partly because of the confusion around the type of license she was using and the sort of freedoms it implied for her audiences. But as she states on her website, the license change was also prompted by the realisation that she would never actually sue anyone for violating the terms of the license. Yet, she does not neglect to mention that she still believes in the principles behind the Share-Alike element.

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<sup>33</sup> <http://www.sitasingingtheblues.com/license.html>

Nevertheless, the Non-Commercial element of the licenses is indeed very popular both amongst filmmakers but also artists in general. From the twelve open content film projects that were closely examined during this research, nine of them were using a Non-Commercial license. Hanna explains the reasons that led her to include the Non-Commercial element in her Creative Commons licensed film:

“Choosing a Creative Commons license is not the same as giving your film away. I still want to protect my work from being exploited commercially by third parties. But also, for me it is important to know that I can still sell rights to commercial distributors if the opportunity appears... Non-Commercial gives me this flexibility.” (Hanna S., interview, September 18, 2012).

So by choosing a Non-Commercial license, Hanna feels that she can maintain a link with the mainstream film industry distributors and connect the gift economy of Creative Commons with commercial exploitation of her work. Both popular and controversial, the Non-Commercial element is indeed the subject of long debates between artists, law professionals and academics negotiating its implications, while it is simultaneously being incorporated into filmmakers’ everyday practices allowing for alternative business strategies to unfold.

### **Non-Derivative**

When the Non-Derivative clause is included in the Creative Commons licenses, it means that the creator does not allow for any modifications or adaptations to be created based on the original work. Such licenses allows for re-distribution but only as long as the original work remains unchanged and it has to be redistributed in its entirety. So while the right to tinker with software is well defined as one of the basic freedoms for free software, when we move to cultural works, the moral right of artistic integrity becomes more relevant at least to some creators. Josef is a documentarian using different copyright statuses (from open licenses to all rights reserved) for different projects. He explains why the specific

license formula that works for free software, may not necessarily work for films:

“Not all things are alike and films are definitely not the same thing as software. The creation and production processes are different, their scope is different, their goals are different and of course the ways audiences use them are fundamentally different... And I don't see why there should be one license size that would fit all... Software serve a practical purpose for users, films are more tied to the creator's vision and aesthetics. So we appreciate software because they allow us to do something else, but we appreciate films for their own essential value.” (Josef M., interview, February 2, 2013).

Filmmakers acknowledge that films are a very personal creation and in many occasions they feel strongly the need to maintain the integrity of their work. So the link between filmmakers and their films is very much different than developers and their software, and this is a difference that Creative Commons are aware of and hence provide the Non-Derivative element of the licenses.

Matthias, though, points out that in many cases filmmakers' fears are misplaced when they claim that their films may be misused if they allow for derivative works to be produced. He explains that under the fair dealings doctrine certain derivative uses are already allowed and since all cultural works, and films perhaps more so, are open to interpretation and dependent on the viewers' understandings to be given meaning, it is theoretically possible that viewers' interpretations do in fact depart from the creators' intentions:

“Essentially it is a matter of control or better of our perception of being in control... We need to come to terms with the fact that we can't prevent being misunderstood, so we better embrace it because different opinions generate a dialogue, a type of communication. That's what culture and art is about.” (Matthias M., interview, February 6, 2012).

Nina also mentions that ND licenses, like NC ones, fail to contribute to the creation of a cultural commons by being essentially proprietary clauses

that support the creation of monopolies and divide our resources into disparate parts with no hope of reconciliation between them. She firmly believes that the Creative Commons as an organisation, in order to truly uphold the values of inclusion and openness that they claim to stand for, should take action to remedy this situation:

“Some people say that Creative Commons should retire these two options altogether. I will not even go that far. But there should be a clear and visible separation between free culture licenses and non free culture licenses. Perhaps they should consider a different name and a different logo for the non free licenses. There are many suggestions and ideas floating around. But it is really urgent to address this jumble of licenses so that it starts making sense.” (Nina P., interview, November 11, 2012).

It should nevertheless be noted that Creative Commons have indeed a system in place to differentiate between the licenses that are “approved for free cultural works”<sup>34</sup> as they put it and the rest of the CC licenses. As they explain on their website, they have used the definition for free cultural works that was developed by the ‘Freedom Defined’ organisation, an open network of free culture advocates and researchers. However, they claim that their aim is to offer creators as wide a range of choices as possible and for this reason Non-Commercial and Non-Derivative options should still be available for the creators who want to use them. Their position is that these non-free options are nevertheless, comparatively more desirable than the “all rights reserved” option of full copyright and they express the hope that they will serve as a stepping stone for creators who will gradually be encouraged to embrace a more free type of license.

### **6.2.2 Openness in Technology Used by Open Content Film Projects**

Some filmmakers and free culture activists also point out that aside from license adoption, unless open content filmmakers have also used free and open source technologies during the whole production and

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<sup>34</sup> <http://creativecommons.org/freeworks>

distribution phases, their films would fall short of being essentially free or open. Anne has often collaborated with EngageMedia<sup>35</sup>, a non-profit organisation and video sharing website that focuses on promoting videos and films on issues of social justice and environmental problems. Anne explains that EngageMedia's goals align with her own, as they place a great emphasis on media independence and open technologies, which they regard as crucial to the process of forming a movement in order to address and challenge environmental and social injustice. They therefore build an extensive network by collaborating with independent filmmakers, software developers and activists, exploring novel distribution methods and technologies, developing tools to enhance the impact of films and also building an online archive of independent films and videos using as a default the CC-BY NC SA license. With regards to the license choice Anne explains that they opted for the CC licenses after both practical and ethical considerations:

"The need for openness is a priority, so that visitors on the website can freely copy and redistribute a work for Non-Commercial purposes. The Share-Alike element contributes to the development of a community spirit where sharing is encouraged and it also encourages the further distribution of derivative works that attribute all the original creators. So with Creative Commons licenses you get a practical framework for sharing without the risk of violating copyright law in different countries... The default license for uploaded videos is the CC-BY NC SA, but there is also a Creative Commons license generator integrated during the video upload process, which allows filmmakers to choose a different CC license if they want to." (Anne H., interview, December 10, 2012).

She also admits that the growing popularity of CC was one of the major reasons for adopting them. The large uptake of the licenses proves their usefulness as both a legal and a social tool and this usefulness only increases while more and more people choose to use them.

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<sup>35</sup> <http://www.engagemedia.org/about-us>

EngageMedia therefore acts as a facilitator for filmmakers who would otherwise have to figure out by themselves how to openly produce and distribute their films:

“The website is a hub for filmmakers that produce documentary, art or experimental films. The type of films that are not picked up by commercial or government media. The team provides training and tools that promote collaboration and open access. For my part, I have compiled a guide for using open technology in filmmaking, where I present all the different options and tools that filmmakers can use during film production and distribution. For software development the main focus is Plumi, which is based on the Plone content management system. It is a free and open source video sharing platform targeted towards filmmakers who want to build their own online video community. ” (Anne H., interview, December 10, 2012).

Digital filmmaking takes some level of familiarity with a wide array of technologies, video standards, formats and other considerations that until now they were not part of filmmakers’ familiar practices and can cause confusion as to the right path of action. Anne points out that it is very straightforward to use open software and technologies during all filmmaking stages as there are always free and open source alternatives to proprietary software. Using free and open source software also brings down the investment cost for filmmaking, which can be an inhibiting factor for no-budget, independent filmmakers. What is more, she advises that filmmakers should think and plan in advance, preferably even before film production starts, about the technological choices that will affect both production and distribution of their films. They need to consider the different formats that they will make their films available on, as well as the audience’s accessibility, devices and standards. Anne has written up a detailed guide with all the different technological considerations for filmmakers and she explains the most important features that she believes all open content filmmakers should consider:

The **Media Player Software**, which audiences are likely to use. Different operating systems have different proprietary media players installed by

default. For PCs there is Windows Media Player and for Macs there is Quicktime Player, while other popular proprietary media players are RealPlayer and iTunes. On the other hand, both VLC (VideoLAN Client) and mPlayer are cross-platform free and open source software. Anne believes that VLC is probably the most user-friendly media player because:

“VLC will play most formats and codecs without the need to download additional software modules, and it will also play DVDs and VCDs. As VLC is GPL licensed, it is possible to re-distribute the program along with your film. VLC offers many other features like streaming.” (Anne H., interview, December 10, 2012).

**Compression and Editing Applications:** Digital video has a bit rate of 36 megabits per second so the resulting files are too large for smooth online distribution and they need to be compressed and rendered in a format which is compatible with the audience's player software. Filmmakers that use non-linear editing applications like Final Cut Pro, Premiere or Cinelerra can compress and encode their files natively, but there are also many FLOSS or shareware encoding applications such as Gtranscode, ffmpegX and Virtual Dub which can also encode in various codecs and formats.

**Codecs:** These are software modules that contain algorithms used by encoding or playback software to either encode and compress streams of data for storage, or decompress them for playback or editing. Anne, although she is a firm advocate of using free and open technologies, she also understands that the most important goal for an independent film project is to actually reach a wide audience with a minimum of friction, instead of maintaining an absolutely pure vision of only using FLOSS technologies. This is why she suggests that filmmakers should offer their films in proprietary codecs as well as free and open ones. Filmmakers should think about the operating systems of their audience, their internet connectivity and technical abilities and consequently try to

make it as easy as possible for their films to reach this audience. Popular proprietary codecs include Windows Media Video and Sorenson 3 for Quicktime, while open source codecs include Ogg Theora and XviD, which is the most widely supported open source option as most media players have native support for it.

**Digital Container Format:** The container format is a metafile format that is used to synchronise different elements for playback, in this case audio and video streams but also subtitles, chapters and metadata. Containers are therefore essential to multimedia applications where different elements co-exist and need to work together. The most widely used formats are ASF, a streaming format for Windows, AVI, another widely used Windows format and QuickTime file format from Apple. While the open source alternative that is not limited to any codec or system is the Matroska (MKV).

Finally filmmakers would also need to consider whether their audience is likely to access and watch their films on mobile devices like phones and tablets. In this case they will need to use the appropriate technologies like the 3gp container format, which is a video compression standard type similar to the MPEG-4, but for mobile phones. There may be also some advantages in actually using mobile devices to record video that will also be in 3gp format and already highly compressed so it can be uploaded online without any further encoding. The downside to this is that both the video and the audio quality will be low but in some cases of community videos or news reporting, ease of use is more important from high quality video.

With regards to technological concerns during the distribution phase of open content films, besides choosing an appropriate format, filmmakers also need to decide on which of the diverse distribution outlets they are going to upload their films on. Considerations related to technological



openness are still relevant when filmmakers choose the appropriate platform to promote and distribute their films. Jamie explains:

“The major hub for filmmakers to upload their work is the Internet Archive. Youtube, Dailymotion and the like, I would not recommend them. They are proprietary platforms that make money from other people’s work and they can simply take down your film for any reason with no explanation, leaving you hanging. I would not promote my work on such platforms... It’s very simple to upload your film on the Internet Archive. You can just use an FTP client and after the upload they generate a page with the film’s metadata that you have also uploaded. In the metadata is also the type of copyright license that the film carries. Visitors then choose to download the film and they can even review it, if they complete an online form. Filmmakers can also link to this Internet Archive page on social media, on their own website or anywhere else they want to promote it.” (Jamie K., interview, June 12, 2011).

Nevertheless, Jamie believes that the best way to distribute a film is through peer to peer file sharing instead of downloading from a central server. He states that this is his chosen method to distribute his films, as it is a much faster and efficient way of distribution because it combines the bandwidth of many internet connections at once.

It therefore appears that open technological tools for filmmaking provide a complete and sustainable alternative to proprietary standards. Their level of sophistication and high performance can be adjusted to the varying needs of open content filmmakers resulting in the overall lowering of the production costs, while maintaining a high quality of production. Nevertheless, as Anne has pointed out, filmmakers cannot expect their audiences to always have hardware and software that are compatible with open technology standards, and therefore they should be willing to compromise in their use of open formats, veering towards as wide distribution as possible instead of maintaining a rigid devotion to a purely open model of independent filmmaking.

### **6.3 Audience Collaboration in Open Content Film Projects – Is It Really Happening?**

Film production has always had a strong collaborative component both in the independent and the mainstream industry (Abrams et al. 2001). Although the director is credited as being the creator of a film, the importance of the whole cast and crew is often underlined. Film production is therefore a team effort but within a specifically defined group of contributors, with clearly assigned roles and a particular hierarchy in terms of decision making. The project's roadmap is planned and decided by the director who can certainly take under consideration suggestions of his cast and crew, but essentially he is the one who controls the whole process. The majority of open content filmmakers interviewed for this research revealed that the creative process in their open projects is not noticeably more collaborative or inclusive compared to the strategies followed by independent films that do not use any sort of open license. And although OCFs sometimes crowdsource certain production tasks, and they may even allow for remixes and derivative works to be created from their films, there is always a core of collaborators with the director in its centre that have the last word on the whole of the creative process. Indeed, meaningful collaborative production of open content films within the broader community remains largely an unfulfilled promise. When collaboration does occur it remains on the fringes of the project development without challenging the essential control of the creative process or the established decision making order, and it usually takes the form of appealing to the community for practical problem solving during production, such as asking for equipment, location suggestions, appealing to fans to stand as extras during production and similar activities. Ton explains his approach to collaborative filmmaking and the use of Creative Commons licenses, while producing animated films with the rest of the Blender team:

“We never intended to use Creative Commons as an expression of democratic mass media. We use it for innovation and research first. The artistic and creative decisions are all up to the director and he gets to decide freely the direction he wants the film to take. Encouraging wide

participation on artistic decisions was never part of our aims.” (Ton R., interview, October 23, 2011).

By using certain types of Creative Commons licenses, filmmakers manage to retain various levels of property rights. When they want to encourage cooperation during film production, the control of the project moves beyond the original creator and allows contributions and management by different actors that want to get involved. Amongst the open content film projects that were examined for this research the only one that intended to explore the concept of collaboration during all the phases of filmmaking and in a very bold manner was “A Swarm of Angels” (ASOA). Matt H. is the founder of “A Swarm of Angels” and his aim was to make his production the first internet funded, produced and distributed feature film. With regards to the funding part, his strategy was that of crowdfunding with a goal to attract 50,000 micro-investors who would each pay £25 to fund the film. In contrast to what happens in other crowdfunded films though, in return for their investment the contributors did not simply receive some film related memorabilia but instead they would get to make key decisions through a voting process for issues during all stages of production. During the pre-production phase they would vote for approving the screenplays and choosing locations, during the actual production phase they would be able to work on the set and vote for trailers, soundtrack and other assets. Matt chose a CC BY-NC-SA license for his project, which he found suitable for his aims:

“A feature film should be built from the ground up and be re-mixable and easy to share and download. This is the future for film and this is why A Swarm of Angels will be licensed under the flexible copyright principles of Creative Commons... We are part of the remix generation and we have the digital tools to make our own media. Because you can’t control or fight media, you need to go with it and this is the trend we follow... We are going to reverse audience’s role from passive to active. We will make a film to be used, remixed and move forward, not simply consumed.” (Matt H., interview, December 16, 2010).

Indeed “A Swarm of Angels” was one of the very first OCF projects that attempted to be an experiment on collaborative film production where all participants and investors would have an active voice on all aspects of the

creative process under the principle of “one head, one vote” and through a web based polling system. Given that the aim was to attract 50,000 investors and collaborators, one imagines it would have taken a lot of organisation and planning to have all the voices heard and reach a final decision. However the project was frozen at about 1,000 participants and it is now on permanent hiatus. It is therefore widely considered that it will never reach its initial goals and has therefore failed to realise its ambitions. It appears that as the number of investors and collaborators was growing, the overall progress of the film was getting slower and its official website, which was the main means of communication between the team, started to suffer from information overload and that prevented the effective engagement with both new and old users.

Tom is an independent filmmaker based in Edinburgh who chooses to not adopt the Creative Commons licenses but nevertheless, keeps himself informed on the activities of open content filmmakers, as he feels that what they are doing is indirectly affecting him as well. Drawing from his own experiences from working with more than one producers with often conflicting interests, he points out that extensive collaboration between different actors can pose serious constraints on film production. Such constraints are exacerbated to the maximum by allowing an active role to all the members of a film’s fan community. He comments with regards to ASOA’s strategy:

“That's like a social experiment in itself. To do that is like saying: ‘let's make a film with 120 directors’. It's interesting but it's not a model. It's not a sustainable model for making films. As things are at the moment when you're making a one hour documentary for television with 100,000 euro budget, which is a low budget, and you've got TV stations from let's say three different countries all putting some money in, they all have different agendas and different requirements. That's common co-production, which is very widespread in Europe because no one country has all the money to fully fund all films for all the channels that exist. But already you're like dealing with different interests and you already have a majority funder that will probably have the final saying. It depends on what deal your producer has negotiated but chances are if you're crowdfunding and giving all the people who are donating a chance to have a saying, you're in for big problems. That is if you manage to ever finish the film.” (Tom J., interview, November 10, 2013).

And indeed A Swarm Of Angels has not managed to be completed. The community around it started to fragment before it even reached the number of investors it sought for. The experience of ASOA suggests that a film production that allows and encourages everyone to participate through voting or open suggestions on all the aspects of film production and distribution is very likely that it will not reach a consensus and will remain unfinished.

The most recent OCF projects maintain audience participation during film production in a less active form. They keep their audience updated and maintain some interaction by making all of their activities public through online social networks like Facebook and Twitter. Audience is asked to vote on more trivial matters such as choosing their preferred movie poster, soundtrack or trailer between already completed versions but they cannot influence how these are actually developed. Where the choice of license allows for further modifications, participation can also take the form of allowing the audiences to create works based on the original film, by using any or some of its assets, essentially creating film remixes. Nicolas explains:

“Allowing fans to modify our material and create new work has a great advantage. When a user sends related works to people or friends he or she is no longer talking about your film, they are talking about their film. And you know, friends and family have the biggest influence when recommending films. So the influence area expands in so many ways and the free advertising that the free work receives is of a good quality.” (Nicolas A., interview, May 17, 2011).

Nevertheless some filmmakers reluctantly mention that even when they do allow for derivative work to be produced, the audiences do not become as active as they would expect them to be. They also express the hope that this situation could change in the future into a type of more active involvement, stating that after decades of learning to passively consume cinema or culture more generally, audiences need time to adjust and become familiar with these new patterns and the new paradigm of active usage and co-creation. It appears then that at least in the field of filmmaking, the expectations and proclamations of

revolutionary change and the rise of the prosumers (Toffler 1980; Tapscott 1996) have not actually materialised.

## 6.4 Practical difficulties in OCFs

Apart from debating the meaning and implications of openness and audience participation in OCFs, filmmakers who choose an open license, oftentimes have to face and deal with various practical difficulties. Although all of the interviewees expressed that the overall experience of making an open content film was a positive and fruitful one, they nevertheless often mentioned how there were problems and issues they had to struggle with. Some even implied that they would not opt to repeat a similar project or that they would do things very differently if and when they venture into open content filmmaking again.

Jimmy is an independent filmmaker and software developer, who decided to make his first open content film “Volcano” while still studying for a degree in Computer Science. He says that he wanted to understand the process of film production and how it can be coupled with open source principles. The success of open source software sparked his interest and he decided to test out how its basic principles can be translated into open filmmaking so he opted for the hands on approach of producing his own open film. He started in 2006 and he completed his project almost four years later in 2010. When asked about his experience and the viability and sustainability of open filmmaking he admits:

“I don’t think that anyone will ever be able to make a stable living out of this. Creating a long-term, sustainable business model seems even harder. I am not saying that open content filmmaking is altogether impossible. I think it can find its place within the broader industry and there are some opportunities to make money.” (Jimmy B., interview, October 8, 2012).

With a total production budget of 2,000 euros, the film is a typical example of the sort of no-budget, DIY productions that experiment with alternative distribution strategies and adopt Creative Commons licenses in order to simplify the legal issues surrounding film distribution. But Jimmy admits that many of the strategies that are promoted as part of the success of open content filmmaking, could simply not be applied effectively to his own project. So contrary to the hype surrounding crowdsourcing and crowdfunding, he points

out that these are tough tools to use when you're a creator with no reputation or community yet:

"When you're just starting out, you don't already have a community to depend on and there is no crowd to appeal to." (Jimmy B., interview, October 8, 2012).

This is the reason why similar revenue generation strategies also did not work:

"I don't think any commercial distributor will be interested in promoting a DVD because of the production quality. Selling merchandise is also not an option unless there is a recognisable brand. Definitely not when you're a student trying a one off project. And voluntary donations brought in very, very little money." (Jimmy B., interview, October 8, 2012).

But while Jimmy is sceptical about the application of open source strategies to filmmaking, he still thinks that it can be done under specific circumstances, especially when financial profit is not a priority:

"If there is no issue with the costs and the budget, and you just want to promote yourself and your work then it can be very effective." (Jimmy B., interview, October 8, 2012).

He therefore concludes that using alternative and innovative means of film production and distribution are sure to get people talking, but not very likely to bring any income for the creator.

Joshua also warns against embarking on an open content film project unless the creator or creators have a clear idea of what they want to accomplish and precisely how they are going to achieve their goal:

"Newcomers have such an enthusiasm about filmmaking. They finally get their hands on the means of film production so they think it's just a matter of time before they create the new blockbuster. I've seen many proposals where filmmakers have nothing solid to start with, no script, no experience, no equipment and they want to make an open film where they will appeal to volunteers and everyone will contribute and vote for everything... It's a feel good philosophy but also a bit naïve. Most of these projects they ultimately fail or just drag on forever. They struggle during the decision making process and they get more and more overwhelmed



until it all breaks down and you end up with nothing short of a mess.” (Joshua C., interview, October 19, 2012).

Indeed as the case of *A Swarm of Angels* indicated these dangers are very real and eminent for open content filmmakers. Joshua emphasises that it is not the open and inclusive participation that is ultimately the problem, this can very well end up being successful as long as the director asserts his authority and makes the final decisions. What he finds even more problematic though is how such projects choose to completely disregard the established rules of the filmmaking process:

“Wannabe filmmakers are either too ignorant or they feel they don’t need to consider the established models for filmmaking. You can’t start production before you have the script written, it’s just not efficient and it will probably end up a disaster. Since they want to do this, why not do it right?” (Joshua C., interview, October 19, 2012).

He also points out that open films progress very slowly since many of the contributors are not in the same geographic location and they are all volunteers, so they don’t work full time on the project or have other jobs and responsibilities to attend to. All these factors need to be carefully considered and anticipated, with plans being made ahead of time in order to confront difficulties effectively as they appear.

Focusing closer to the application of the CC licenses and issues related more strictly to their use, Kayle also expresses concerns about their commercial viability. He has chosen to license his latest animated film project under a CC-BY NC SA. The reason for using a Non-Commercial license was so that he would retain the possibility of additional distribution deals through a mainstream industry intermediary. However, he expresses concerns that this may not had been a sound decision after all:

“I am not sure at all if this is ever going to happen. It was hard enough to strike a deal when I could offer them exclusive rights. Who will be interested in a work that circulates freely online? They’ll think it’s impossible to make money out of it. But it’s still better to have a Non

Commercial license, at least it leaves some windows open, there are more possibilities.” (Kayle N., interview, December 12, 2011).

Such concerns relate to the general uncertainty that independent filmmakers have to deal with when searching for commercial distributors regardless of the type of copyright restrictions that they apply to their work. In the case of open content filmmakers their choice is essentially a compromise between increased visibility and also increased uncertainty because of the free circulation of their films online.

Michela also explains how the fact that she used a Creative Commons license (CC-BY NC SA) for her open content film led to problems with the actors’ union that initially refused to allow its members to take part in her film. Michela is based in London but part of the shooting for her film was planned to take place in Australia. The actors’ trade union in Australia was concerned that by using a CC license they would give up too much control to the audiences. Michela explains:

“They thought that CC was bad for business. They were worried that future remixes could have a negative effect on the actors’ reputation. They mentioned that it was impossible to know what the footage could eventually be used for. They said that it could be used for promoting pornography, abortion, Neo-Nazi propaganda, anything. These were really their examples, it’s crazy, I know. I tried to explain that applying a CC license did not affect at all the moral rights of the creators and contributors but they still insisted that it would exploit the actors. It was a very troubling situation and it just revealed their ignorance about CC and how they prefer to stick to old, sort of established production patterns. It’s a good example of how the industry blocks innovation because they can not dare think outside of their comfort zones.” (Michela L., interview, October 15, 2011).

According to Michela the controversy is still open, although the project managed to survive because of the support of a different government agency. It therefore seems that lack of information about the implications of CC licenses’ usage can have a seriously detrimental effect to the projects that adopt them. This is especially so, because their adoption and use is limited amongst professional

creators and there are not a lot of legal or practical precedents to base a more complete understanding upon.

## **6.5 Reasons for Resisting Adoption of Creative Commons licenses**

The issues discussed during the previous sections of this chapter deal with the problems, conflicting interpretations and fragmentation of the open content filmmaking movement. Therefore, they dealt more with the experiences and opinions of the licenses' users, although non-adopters of the licenses also had on certain occasions relevant opinions and consequently their input was included as well. In this section though we will focus exclusively on independent filmmakers who resist Creative Commons license adoption and the three main clusters of reasons that they present for doing so. Independent filmmakers decide not to adopt the Creative Commons licenses when they think that they are not relevant to their projects; or when they feel that they are not a sufficient legal tool to promote digital rights and organisational change in the online environment; and finally some filmmakers may consider the licenses and their fervent promotion as suspicious or even outright harmful for their long term creative and commercial activities. It should nevertheless be noted that some of these filmmakers, although they don't license their own films under CC, they often work with production, distribution and marketing platforms that incorporate the licenses or collaborate with other filmmakers who license their work under Creative Commons.

### **- Irrelevance**

Some filmmakers, although they do acknowledge that in a few occasions one could gain social capital by using the licenses, on the whole they do not find them relevant or helpful for their own work. So without having any particularly negative connotation regarding the practices surrounding the licenses, they simply do not acknowledge them as relevant or necessary. They do not underplay the importance of digital tools in general, they simply think that the licenses' scope is much more limited than the open rhetoric of digital rights group usually imply. Peter, who is an Edinburgh based independent filmmaker, explains:

“What really counts is the platform you use to distribute and market your film. Using the right platform, one that is targeted to your audience, their interests or that deals with the same issues as your film is key to successful marketing. So if your film is about, say trains, you better advertise it on a train aficionado network.... Sure, if your film is about copyright or related issues then you can use CC and advertise it on the CC website and yes it is useful. But in any other case I don't think it has any value, it just wouldn't work” (Peter G., interview, October 24, 2011).

Peter's conceptualisation of the usefulness of the Creative Commons licenses is based on their ability to connect creators with their audience and consequently to form a fan community around open content films. He doesn't acknowledge that they could simplify the legal issues around independent film production and distribution. As a matter of fact, he believes that they could actually contribute to further confusion and misconceptions about access and re-use regimes for digital resources in the online environment. He explains:

“I have talked with a lot of people who think that when something is online it is also immediately up for grabs. Having, I don't know, ten or twenty different copyright licenses for all sort of data, I don't see how it helps clarifying anything. It actually feels like it is the other way around.” (Peter G., interview, October 24, 2011).

His opinion points to thorny issues related to copyright licenses' proliferation and the consequent perplexity surrounding the different possible copyright status of online resources which is deemed detrimental for filmmakers' creative activities and livelihood.

Mike says that he was initially intrigued by the concept of Creative Commons and started looking into them to see how and whether they could be applied to his project. After asking around and researching online he explains that he concluded that they were not the best fit for the purposes of professional creators:

“I watched some lectures and TED Talks and the like and there was something alienating in them, for me. Lessig and other people from Creative Commons argue that the internet allowed the emergence of a remix culture and changed our attitudes from read-only to read-write culture. And of course they seem to think that Creative Commons is the

legal manifestation of this remix culture... This emphasis on the internet is a bit annoying, it's like there was no art, no creative work or no adaptations before the internet and CC made them possible. And they just seem to focus on amateur creation, teenagers making videos and mash ups in their bedrooms. Sure, these examples fit CC licenses perfectly but it's a huge leap from there to assume that CC licenses are the answer for all digital material." (Mike M., interview, April 12, 2012).

Gary, along a similar line, also insists that another problematic point with CC's rhetoric and promotion of the licenses is how they stress the well-known trope of digital technology enthusiasts that information wants to be free and that the licenses are here to minimise the frictions in this free flow of information:

"It's like digital resources exist in a separate sphere and they can spread and shared around the world through decentralised networks without any human effort. I have worked with national archives and have seen the sort of effort it takes to digitise and preserve their collections. I think we need to have a clear picture of what we're dealing with before we go around blaming the content industries that lobby and influence laws to promote their own interests. Digital content may be easy to reproduce but to create that first copy, the original work it takes actual human effort, time, money and dedication so the issue of ownership is present from the very beginning and this is an issue that should be addressed. If we really value the digital commons, we should give much more attention to the revenue and business model of creators." (Gary W., interview, June 8, 2012).

We can therefore see how independent filmmakers are quite critical of the narratives and metaphors that Creative Commons use to promote the licenses' uptake. Creativity does not automatically flow from the inherent qualities of the internet, while cultural dialogue, co-creation and building up from pre-existing idea have always been taking place, not simply in cultural creation but in all human activities. What is more, they point out that CC is perhaps not nuanced enough in their approach towards cultural creation as they approach a great variety of projects through the same, undifferentiated way. At the same time, they do not engage meaningfully with the possibilities of building a sustainable business model for professional creators but they rather present it as an issue that will be resolved somehow automatically without conscious effort or struggle.

Since adoption of the licenses is not the norm for creators in general, a work featuring a CC license immediately captures the attention of the open culture community and the CC team often provides exposure for open content creators by advertising their projects on the CC website, and therefore taking advantage of this niche market. Nevertheless, interviewees also question the arguments advocating that once you have gained exposure through the use of CC, people will continue to follow your work even when it is offered under more restrictive terms. Tom, an independent filmmaker and documentarian explains:

“If you think that if you give a film for free someone will pay for your next film, I think that's a really bad idea. There's nothing that guaranties that the audience will follow your work, what is more likely is that they will follow what they can get for free... I'm not saying that CC is not useful at all, it can be, for some people. But it's not the only solution for digital copyright, for all content and all creators.” (Tom J., interview, October 11, 2013).

We can therefore see that some independent filmmakers do not find open licensing as a useful approach in managing digital copyright, but we should also bear in mind that this does not mean that they approve of the current copyright regime; it rather means that they feel very conflicted by the contradiction of having to rely on existing, often copyrighted works and simultaneously guard and protect their own copyrights.

#### **- Insufficient for Promoting Legal and Organisational Change**

For some filmmakers and digital rights activists, Creative Commons is considered as a too soft approach for promoting what they are striving for: copyright reform. Such filmmakers ask for a more radical change, while agreeing with some of the basic premises of the Creative Commons rhetoric and approve of some of the practices that they enable. Such criticisms of being too moderate and too dependent on copyright, are often raised against Creative Commons, especially from members of grassroots organizations who take a more radical approach on issues related to digital rights and freedoms. Jamie is a digital rights activist affiliated with the UK Pirate Party and also a filmmaker

who decided to not license his documentary film under a CC license because they are not subversive enough. The name of the film is “Steal This Film” and it documents the social movement against Intellectual Property. Jamie explains that along with his collaborators, they theoretically retained full copyright of their film, so that they would encourage audiences to engage in a symbolic activity of civil disobedience by actually “stealing” it, as copyright proponents would put it. The film was distributed through the Pirate Bay and other peer-to-peer networks and it became one of the most downloaded documentary films.

With regards to the Creative Commons organisation he offers one of the most scalding critiques:

“I think Creative Commons is insufficient in regulating and promoting sharing. When CC appeared we were really pissed off... It was like creating a Sinn Fein before the IRA existed. We have a war to fight and suddenly the moderate party comes in and says 'we can fix all these'.” (Jamie K., interview, June 12, 2011).

He therefore points out that what the digital environment needs is copyright reform and this need can not be mitigated by the legal fix that Creative Commons represent. His critical views also extend to the founder of Creative Commons, Lawrence Lessig:

“Lawrence Lessig is in my view a very intelligent man that used Creative Commons as a stepping stone into his political life. The way he did that was by positioning Creative Commons in a way that said 'I know that there is a world of piracy out there but I'm the guy who is in touch with the grassroots and I'll show you how to fix this'. The only one who was guaranteed to win from this situation was Lawrence Lessig and Creative Commons... How can you facilitate user innovation, that is from the bottom-up, using a top-down approach initiated by lawyers? You can not challenge IP laws through an IP based system. You can't have lawyers regulating and being the new intermediaries of creativity.” (Jamie K., interview, June 12, 2011).

We can see here how filmmakers involved in digital activism attempt to shed a different light to the Creative Commons organisation by underlining the politics and manoeuvring of its founding members. But it is mainly the ideology behind the Creative Commons project that Jaimie disagrees with:



“Creative Commons has a very American, I mean very litigious view of the world. Is that the vision of the world we want to live in? Where all creative articulations or products have to be treated in a proprietary manner? Creative Commons simply offers a more nuanced proprietary view. There is a cataclysmic change in intellectual property, are we going to fix it with a band aid?” (Jamie K., interview, June 12, 2011).

Jamie, along with other digital activists, claim that the sort of practices that the use of CC licenses enable in the name of open culture, are actually a complete distortion of the open ethos. They believe that the “legally free” sphere that CC promotes, will end up enclosing cultural resources in different types of privatised and proprietary domains and platforms. So what they advocate for is a more radical disruption of the ways that creative work is handled. Indeed many digital activists want to emphasise how important it is to demand a radical change of the current copyright system by pointing out how these concerns go beyond the online environment and are essentially human rights issues.

#### **- Suspicious for Promoting a Pirate Mentality**

Some independent filmmakers believe that the use of the licenses can have damaging social and economic effects especially for mid-level, independent creators. Paul, who is an independent creator specializing in filmmaking, digital storytelling and photography, explains his views:

“The people who suffer from piracy are the mid-level artists... Using Creative Commons licenses is wrong because it creates a stream of free content and educates people to expect professional quality films for free. And once you're educated that way and you're used to that and then you feel that there's no reason for you to pay.” (Paul T., interview, August 12, 2012).

James also mentions similar concerns:

“Creative Commons may be effective for some scientists or academics whose work is non-profit and rely on the exchange of ideas and information. But for filmmakers or musicians who depend on their art for their livelihood, they face an entirely different set of considerations... With all the hype around openness and digital economy, people have

come to expect that they'll get something for nothing. And when creators don't give away their work for free or they don't use Creative Commons, they are accused of being out of touch with the times, not being authentic, or being greedy. It's like we are being forced to give up our rights, simply based on vague promises. I'm not obsessed with money but my super market insists that I pay them before I leave. [laughs]" (James F., interview, October 14, 2012).

Independent filmmakers insist that it is critically important to get beyond the trendy facade of digital licensing alternatives and look dispassionately at all the available choices for creators. Even more, they stress that audiences should respect the choices that creators make with regards to licensing and distribution of their work, regardless of what these choices are.

It was often mentioned that people need to be 're-educated' in the consumption of digital content so that they abandon the 'anything goes' mentality. Some independent filmmakers claim that while it would be acceptable for amateur creators to offer their work freely, a work of professional standards that is openly shared will end up being detrimental for the whole creative community. Jon, who is an independent filmmaker, web developer and photographer, explains that the current situation is bleak enough:

"At the moment we've had, I don't know, 15 years where people start to believe that everything on the internet should be free. I think we need to tip it a little bit the other way and say: 'OK good content is worth paying for'. If all content online is free then we'll end up with content that is advertisement for some other product or service or it will be produced by amateurs with a different day job. To me this is obviously not a good thing. The idea that you can produce high quality content by selling T-shirts is totally insane. Why can't anti-copyright advocates at least be honest and admit this?" (Jon C., interview, September 28, 2011).

Peter gives an illustrative example of the frustration that new filmmakers often have to deal with, by explaining how he offered his film "Just to Get a Rep" freely on his website asking for voluntary donations in case the audience found it worthwhile. Beyond the donations, it would also be desirable to simply attract people to his website but interestingly, although the film was available to be

streamed online freely, it was still pirated and made available through peer to peer applications, thus cancelling the need for people to visit his website.

An additional reason for the licenses' to be regarded with suspicion is their possible alignment with the financial interests of large technology corporations like Microsoft and Google. Some filmmakers note that Creative Commons' neoliberal approach to creative labour and the free distribution of creative works is not as innocent as it wants to appear. Tom claims that as an organization Creative Commons is tolerant if not promoting an online piracy mentality and he points out that the companies and the institutions that donate most generously towards the Creative Commons organisation are large ICT corporations such as Google, Hewlett Packard and Microsoft, the same usual suspects benefiting from the internet traffic that online piracy sites and applications create. Tom acknowledges that perhaps the majority of filmmakers that use the licenses do not recognise the potential threat that could stem from the practices that they enable:

"It's a sad irony but what Creative Commons is encouraging is the idea of unemployed, low income, amateur artists who can't dedicate their time to enriching their work but they are expected to offer everything they create with no payment. Think about it. Who really benefits from this situation? Who benefits from all the traffic that free content creates? Google, and YouTube, and Apple, and internet service providers." (Tom J., interview, November 10, 2013).

While financial revenue is not the only reason for cultural creation, avoiding the problem of revenue sustainability altogether, which the CC organisation and digital rights activists are perceived to be doing, is regarded by independent filmmakers as either naïve or cynical. This is demonstrated by independent filmmakers who often express the view that Creative Commons seem to be primarily concerned, not with the well being and innovative practices of either creators or audiences, but instead their main aim is to facilitate the smooth running of the internet and digital technologies.

## 6.6 Closing Remarks

In this chapter we focused on the problems, conflicts and misinterpretations with regards to Creative Commons licenses' adoption by open content filmmakers. We now have a more complete picture of how open models of content creation work, or on occasions fail to work, for independent filmmakers, by having traced the whole cycle of adoption, implementation and fragmentation of the open content filmmaking movement. We saw how the significance and interpretation of openness is debated and negotiated by filmmakers who may stress on different aspects of a CC licensed film to express what openness means to them. Indeed openness can be both a value and a tool depending on the practical and ideological considerations of the participants. For some, open resources and Creative Commons licenses are used instrumentally to promote their films and configure their revenue models. For others openness has an intrinsic value and they are more oriented towards long-term policy issues or copyright reform. A similar lack of cohesion can be observed with regards to the desired levels of audience participation in open content films. Different approaches range from aspiring to create a fully collaborative and inclusive film production, albeit with doubtable levels of success; to simply allowing free access to films with no really meaningful opportunity for audience involvement. Furthermore, open content filmmakers have to deal with many practical, day-to-day difficulties and complications related to their revenue generation strategies, technological competence or legal complications. Finally in this chapter we also focused more on independent filmmakers who resist CC licenses' adoption even when they sometimes choose to offer free access to their films online. The reasons for resisting adoption and their understandings and interpretations of the licenses varied widely, from believing that they have no bearing on their activities, to actually perceiving them as harmful for their long-term livelihoods, or even regarding them as an inadequate tool for bringing about meaningful change in the digital environment.

Indeed open content filmmakers are a heterogeneous group comprised of digital rights activists, independent practitioners, non-profit organisations and even members of political parties. Along with non-adopters of the licenses, they all seek to find answers to practical, legal or technological problems, while prioritising different aspects depending on their social contexts, goals and mind-sets. They therefore put in place different organisational configurations and arrive to different understandings of Creative Commons' affordances and limitations. Nevertheless, this interplay and even conflicts between different actors and competing forces contribute to the dynamism of the networked digital media and should not be ignored by the Creative Commons organisation. The diversity of creators and their different articulations should be part of a wider and inclusive debate on the future development of the licenses, if Creative Commons truly aspire to be a useful tool for all the different creators who want to participate in an open and sharing economy without jeopardising their long term revenue models.

## **Chapter 7**

### **Discussion and Conclusions**

#### **7.1 Introduction**

The aim of this thesis was to examine the Creative Commons licenses' adoption and implementation strategies by independent filmmakers, as well as their processes of resistance towards license adoption. Through an in depth investigation of filmmakers engagement with Creative Commons licenses and their associated visions and understandings of what constitutes open content filmmaking, this thesis' goal was to contribute to a more rigorous understanding of open content production for cultural resources based solidly on the creators' experiences and expressed needs. More specifically, I set out to explore the motivations, expectations and understandings of the Creative Commons licenses by independent filmmakers who chose to adopt them, as well as those who resisted their adoption. Furthermore, I examined the processes through which open content filmmakers appropriated and domesticated the licenses by situating them within the development of their open film projects. The research revealed a complex landscape where the processes of adoption and domestication were far from smooth, leading often to tensions and conflicts about the application and usefulness of CC licenses in achieving the filmmakers' practical or ideological goals.

This concluding chapter will address three main subjects. Firstly, in section 7.2 I reflect upon my chosen methodology, explain the advantages of my research design and assess how they have assisted me in overcoming several practical and theoretical problems during the research. In this section I will also revisit my research questions and explain how they have evolved through the acknowledgement of novel elements occurring in the initial stages of fieldwork.

Section 7.3 will tie together the three empirical chapters of this thesis by providing an overview of the undertaken research and present its core findings and knowledge contributions, thus answering the main research questions. Finally in section 7.4 I will provide some final remarks regarding the shortcomings and limitations of my research design and offer avenues for further research directions based on the findings of this thesis.

The research captures a gap in the current understanding of open licensing adoption and its relationship to cultural creation and digital technologies, and is therefore both timely and relevant. In particular, this research shows for the first time how creators, in this case independent filmmakers, integrate or resist open licensing suites like the Creative Commons, throughout the whole process of digital cultural production and distribution. It demonstrates that both resisting and accepting CC adoption are stances motivated through practical and ideological considerations and influenced by interactions with diverse actors in both online and offline networks. The landscape of digital cultural production that is revealed is comprised of both mainstream cultural industry practices and hybrid, networked forms of organization. The tense but innovative combination of open cultural production practices with mainstream, established routes, alerts to the need for not only the implementation of open licensing strategies, but also for the application of “all rights reserved” copyright approaches.

## 7.2 Reflections on the Research Journey

### - Coping with Unexpected Changes

Before proceeding to the more detailed analysis of this research's contributions which is conducted in section 7.3, I would first like to return briefly to the original motivations for this PhD project, look at how it has evolved and how several of its goals and processes were revised and refined over time, along with new circumstances presenting themselves. My perception of the landscape of ICT enabled, open cultural production, that I initially sought to explore, has changed significantly through the five years of this research. The fieldwork itself obviously contributed in shedding light to new and unexpected aspects of my subject of study, but there were also a couple of incidents that although not directly related to the ongoing research, nevertheless shaped and influenced its direction and results.

One of these unexpected changes was the result of a set of personal factors that necessitated a short interruption of studies and the effective continuation of the research as a part time student. These complications, therefore, led to extending the period of research, which actually proved to be a very beneficial and illuminating development in many ways. It allowed me to revisit projects and participants which I had interviewed during the early stages of my research and who had now completed their projects and had, in many occasions, acquired fresh insights and different experiences to share than those they had when their films were still under production. PhD projects are usually constrained by both the availability of financial resources and time limitations. I was aware that the limited time frame of the research would only allow me to get a glimpse of various film projects at specific moments of their development, rather than tracing the complete path of the licenses' adoption, domestication and implementation within one specific film project. My initial intention was to counteract this shortcoming by including and combining different projects at various stages of their development in order to achieve a more biographical approach of the Creative Commons licenses' trajectory within open film



projects. Although this is an adequate response to real research limitations, the insights provided by revisiting the same project at different phases of its development are deeply revealing of the dynamic shifts that can take place throughout a project's development or even after its completion, and it is something that can hardly be substituted by comparing different projects with often different goals or different actors involved. As Sørensen (1996) points out one of the most important contributions of the social learning approach is its ability to highlight the temporal dimension of sociotechnical change. Had I not extended the research period, I would not have been able to capture this change over time in the trajectories of open content film projects and thus provide a biography of such practices that clearly communicates the power struggles and conflicts involved in the social learning around the implementation of the Creative Commons licenses.

The second change had come much earlier, just five months after my board paper review when my PhD project was given the green light to proceed. While still in the very early stages of data collection, I was informed that both of my supervisors whose insights assisted me greatly in narrowing down and designing the research, had taken up new positions abroad and would therefore no longer be able to, at least formally, guide and advise me during my research. A PhD research design is in many ways shaped by factors beyond the specific subject of study or the researcher's preferences and personality. Such areas of influence include the epistemological and methodological orientation of the discipline where the student is based and also the background and research directions of the PhD supervisors. One of my supervisors was based in the School of Law and his expertise and interests lay on the intersection of Intellectual Property Law and digital technologies. He was also the project lead for the Creative Commons: Scotland, the project in charge of the localization of the license suite who created jurisdiction-specific licenses from the generic Creative Commons suite. Indeed, he was, and still is, a fervent enthusiast and very active in promoting the licenses through different contexts and to different social groups and communities. As a matter of fact, I owe most of my initial

contacts with research participants to his extensive network of colleagues and friends who had used the licenses, many of them after his own encouragement and advice. I, too, shared his enthusiasm of the licenses' potential to offer a very promising and vibrant alternative to mainstream structures of cultural production in the new digital economy. Despite my attempts to approach my subject with appropriate diligence and through a critical state of mind, in retrospect I can see how my initial framing of the debate was coloured by the values I aligned myself towards. Through the formulation of my research questions and goals, I anticipated the successful application of Creative Commons licenses and I was mostly focused on *how*, not *whether*, independent filmmakers would manage to build sustainable revenue models based on open licensing practices.

Indeed my initial research questions were the following:

**R.Q.1:** What are the reasons that motivate Open Content Filmmakers' to adopt the Creative Commons licenses and what are the understandings and meanings they ascribe to them?

**R.Q.2:** What are the alternative models for cultural production, distribution and revenue generation that Open Content Filmmakers develop and how does the adoption of the Creative Commons licenses contribute to the formulation of such models?

Nevertheless, after collecting and conducting a primary analysis of my initial sets of data, which happened shortly after the replacement of my first supervisors, there started to be indications that my original framing of the research was missing parts of a picture which proved to be much more complex and layered than my initial understanding. This initial data analysis was pointing towards tensions and conflicts within the open content filmmakers' community, taking place during their struggle to situate the licenses within their practices with varying success. There were also indications that more attention should be given to independent filmmakers who were not using the licenses but

nevertheless remained relevant to the overall debate of ICT-enabled cultural production. After these realizations the research questions changed as follows:

**R.Q.1:** What are the factors that motivate independent filmmakers to adopt the Creative Commons licenses and what are the understandings and meanings they ascribe to them?

**R.Q.2:** What are the alternative models for cultural production, distribution and revenue generation that independent filmmakers develop around open content film projects and what role does the adoption of Creative Commons licenses play in such projects?

**R.Q.3:** What are the conflicts, problems and tensions that independent filmmakers have to navigate through in order to develop a sustainable model for open cultural production?

The adoption and domestication of the licenses was not always as smooth or unproblematic as mainstream Creative Commons' rhetoric made it appear. Independent filmmakers who chose not to adopt the licenses, on occasions even when they did want to promote the open distribution of their films online, surfaced as a very relevant, although generally neglected group of actors with often very nuanced understandings of the debate on digital disruption of the cultural industries. Open Content Filmmakers themselves are a heterogeneous community of creators who *may* opt to use the licenses for *some* of their projects depending on how each of them assesses the licenses' contribution along two different levels, a pragmatic and an ideological one. So they often re-evaluate their adoption practices depending on how effective they perceive the licenses to be in offering practical solutions for legal complications surrounding the production and distribution of their films; while they also re-assess the input of license adoption for furthering different ideological causes or ethical viewpoints with regards to cultural production, such as the promotion of openness, transparency, participation and empowerment.

## - Methodology as a Guide through the Research

The principal factor that assisted me in remaining open to perceiving such new and unexpected facets of my research was the theoretical and practical underpinnings of my chosen methodology and the subsequent research design that I used as a guide to fieldwork. The main function of a research design is not only to ensure that the data collected enable us to answer the initial research questions as unambiguously as possible, but also to allow us to reformulate our initial research objectives if that leads to a more complete and nuanced understanding of our main research focus. Opting for a qualitative methodology informed by the Social Learning framework allowed space for reflexivity throughout all the phases of the research and offered the necessary flexibility that allowed for unexpected outcomes to be easily recognized and incorporated within the research, revealing thus a broader and more complete picture of the sociotechnical dynamics involved in filmmakers' opting for or against adopting Creative Commons licenses in their development of alternative, ICTs enabled models for cultural production.

Empirical, qualitative research is much needed on all aspects of this wide and contentious debate on how to manage creativity and cultural production in the digital environment. Within this terrain, copyright law merges and clashes with open licensing strategies, as mainstream film industry practices merge and clash with networked peer production and open distribution of films. While trying to make sense of the occurrence of such changes, IP scholarship is often criticized for being mostly theoretical, abstract, prescriptive and normative<sup>36</sup>, as it is mainly preoccupied with "the law on the books" and doctrinal approaches to the application of copyright law and its alternatives. On the other hand, many Media Studies and Socio-Legal scholars have tended to embrace the "transformative" powers of digital technologies that along with the aggregated

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<sup>36</sup> Coombe, R. J., (2004). "Commodity Culture, Private Censorship, Branded Environments, and Global Trade Politics: Intellectual Property as a Topic of Law and Society Research", in *The Blackwell Companion to Law and Society*, ed. Austin Sarat, Oxford: Blackwell.  
Gallagher, W. T. (ed.), (2007). *Intellectual Property*, Aldershot: Ashgate.

capacities of individuals will bring forth a new era for cultural production and creative practices<sup>37</sup>. Such work is often biased towards innovation and the new capabilities that are assumed unproblematically to open up through the use of digital ICTs. Creative Commons draws upon such ideas, arguing that open systems produce better results than closed ones and that therefore opting for openness is not simply the morally right thing to do, it is also the most effective in practical terms since creativity and innovation are best served by an abundance of information and the wide distribution and availability of cultural resources. Such views often ignore the diversity and heterogeneity of the actors involved in open cultural projects and how these actors offer different articulations and interpretations of the usefulness for both copyright and open licensing systems. The increased availability of information has complex consequences (Kallinikos 2006) and its unfolding dynamics shapes in often unpredictable ways both established organisations and for novel, networked models of cultural production (Brown & Duguid 2000). Instead, Creative Commons strategy and discourse, borrowing arguments from the more techno-enthusiastic brand of media scholarship, assumes that the increased availability of information can only have positive consequences both for society and organisations.

Applying STS theories and methodologies to study how digital media, cultural creation and copyright options come together, influence each other and develop simultaneously through their interconnections, reveals a different landscape to the one described by either legal scholars who focus on formal rules and their

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<sup>37</sup> Benkler, Y., (2006). *The Wealth of Networks: How Social Production Transforms Markets and Freedom*, Yale: University Press.

Jenkins et al. (2009) *Confronting the Challenges of Participatory Culture: Media education for the 21<sup>st</sup> Century*, Massachusetts: MIT Press.

Leadbeater, C., (2008) *We-think: Mass Innovation, Not Mass Production: The Power of Mass creativity*. London: Profile Books Ltd.

Lessig, L. (2008). *Remix: making Art and Commerce Thrive in the Hybrid Economy*, London: Bloomsbury Academic.

Shirky, C. (2008). *Here Comes Everybody: The Power of organizing Without Organisations*, New York: Penguin.

Tapscott, D. & Williams, A. D., (2006). *Wikinomics: How Mass Collaboration Changes Everything First*, London: Atlantis Books.

application, or new media scholars who through mainly quantitative methodologies, embrace an overtly enthusiastic, if not utopian vision of the affordances of networked technologies and their “effects” on society, cultural production and creative practices. Such asymmetrical treatment of the subject which presumes particular development outcomes have encouraged some researchers to resort to descriptive statistics and abstract trends in order to map out a situation, not to go in depth and offer rich descriptions of different rationales for employing alternative ways to organize or identify the driving forces behind this contested landscape. Indeed, by following a qualitative methodology and moving within the Social Shaping of Technology general framework, we can transcend simplistic accounts of the main debate and expose modernist visions of technology as providing an incomplete picture of the overall landscape and linear explanations for very complex and diverse processes.

Following insights from the Social Learning perspective, we follow the circulation of meaning around Creative Commons licenses and therefore manage to reveal diverse arrays of actors with different motives, competing visions (both practical and ideological), involved in interconnected and heterogeneous networks, in a constant process to situate the licenses within their creative practices.

Social Learning in Innovation (Sørensen 1996; Williams, Stewart and Slack 2005) is indeed an approach that was developed within the more general tradition of the Social Shaping of Technology (Williams and Edge 1996; MacKenzie and Wajcman 1985) and places in the forefront of analysis the choices, complexities, uncertainties and contingencies involved in the development of new technologies. It focuses on understanding the mutual shaping and multiple links between technological and social change, which would include legal innovation as well, while simultaneously tracing the precarious and contested processes of learning that are integral to the development, implementation and domestication of innovation. Social Learning

also hints on how both the affordance and limitations of innovation should not be taken for granted, as they truly only become apparent through its practical application in the users' day to day practices and after continuous interaction through diverse environments. Creative Commons licenses as a legal innovation was conceived as a means to exemplify and assist an alternative and innovative model of organizing cultural production, its dissemination to the public as well as subsequent re-use and re-mix of the work. Nevertheless, independent filmmakers in their actual practices re-imagine the licenses' application in cultural production models that depart from Creative Commons ideals and combine formal industry structures with networked dynamics. Such unanticipated uses of the licenses are the products of continuous experimentation and trial and error practices based on creators' actual needs, not lawyers' ideas of creators' needs. Processes of domestication call for the appropriation of artefacts in specific settings, through an integration process that works both in the practical as well as the symbolic domain (Lie and Sørensen 1996). Indeed we see how filmmakers through their situated practices attempt to make the licenses fit to their evolving requirements both as a practical solution for IP rights management in the digital environment and as a more or less successful means to promote openness, self-expression and participation.

### **7.3 Discussion of Thesis Contributions**

Through the three empirical chapters I have sought to chart the Creative Commons licenses' trajectory of adoption within the independent filmmaking community. Each of the empirical chapters reveals the findings and contributions related to one of the main research questions. So, starting off from an exploration of the reasons that motivate filmmakers to adopt the licenses, we moved to the examination of the strategies around their implementation in open content film projects and concluded with an analysis of their limitations and contradictions leading to frictions and the subsequent disjunction of open content filmmaking. We can therefore trace the whole cycle of adoption, implementation and fragmentation by following the organic unfolding of the dynamics of Open Content Filmmaking. Through the main actors' accounts, we learn about their grievances against the rigid, bureaucratic structure and processes of the mainstream film industry, as well as how alienated they feel towards copyright law and the various ways that it affects their practices. These problems are at least partially bypassed through the espousal of ICTs' affordances and the adoption of web enabled strategies for the production and distribution of their films. Informants excitingly describe how they learn to adjust their strategies and alliances in order to integrate into this digital networked environment; and the way they do this is through experimentation and trial and error practices but also through their interactions and information exchange with other actors who are in tune with this new information economy and digital native communities like Creative Commons. Creators who embrace practices adjusted to the online environment regard the uptake of the licenses as part of their digital arsenal, and CC licenses are often viewed as the native legal response for the management of their digital rights. Nevertheless, their chosen "web route" is also not one without problems. One of their basic needs is to devise alternative methods to monetise their films and even more importantly to find their niche audience, garner its support and maintain a



community that is sufficiently involved to support them in direct and indirect ways. The application of CC licenses is meant to assist them during these processes but their applicability and success is dependent on the specific characteristics and goals of each film project, and perhaps more importantly on a clear understanding of the licenses' advantages and limitations. It therefore follows that a call for their blanket application in web oriented, independent film projects neglects to take into account such intricacies and could actually, on certain occasions, create more complications than it is trying to resolve.

Through this research we identify certain characteristics and orientations in digitally enabled, independent film projects that are most likely to be successfully combined with open licensing strategies. The most defining feature of successful open film projects is their ability to build and maintain a networked community of supporters and collaborators. The majority of open licensed, independent productions which are announced, never actually materialise and they appear to be conceived out of a quixotic enthusiasm for working with new networked technologies that does not take into account the intricate complexities and constant effort of domesticating the available technical, legal and social tools available to independent filmmakers. The projects that manage to successfully complete a film, promote and distribute it, are the ones where dedicated filmmakers managed to build and maintain heterogeneous networks of audiences, supporters and partners, based on reciprocity and genuine social bonds. Filmmaking is a notably resource intensive undertaking. As a result, low budget, independent filmmaking projects especially, because of their limited resources, often see their production periods stretch over several years. It therefore requires a lot of dedication and hard work, not only towards the cinematographic or technical aspects of a project but equally towards the social facets of it, the building of relationships and the mobilisation of diverse actors towards stated goals. The importance of having a committed community supporting an open film project echoes in the choice of genre for open film projects. The overwhelming majority of successful Creative

Commons licensed films are either: 1. Science Fiction themed or, 2. Documentaries:

1. Science Fiction: The connection between the science fiction genre in cultural production and technological oriented communities has been particularly strong since the early days of networked information and communication technologies. Creators experimenting with digital technology tools and organising the production and distribution of their films through online networks are often strongly inclined to telling stories related to science and technology. This inclination stems from more than personal preference. Filmmakers who understand the importance of having an online community to support their project pay equal attention to the “online” part as to the “community” one. They admit that people and organisations most likely to be active on the online environment are those who are preoccupied with the development and further cultivation of this complex networked ecosystem. Therefore, a fiction film on futuristic technology, science and innovation is very likely to attract attention from those actors who are more accustomed to the online environment and tend to be more active and skilled within this setting.

2. Documentaries: When it comes to documentary films licensed under Creative Commons, their primary purpose is to promote a specific cause and spread a message as wide as possible, while financial recuperation is often an afterthought. It is thus also not surprising that the majority of the documentaries licensed under CC deal with issues related to digital environmentalism and amongst them copyright problems feature very prominently. In this way filmmakers want to draw attention to the problems they address, both through the topic of their films but also through its production and distribution strategies. They do not simply talk or expose the problems but they actually, through their open distribution practices, transcend them and embody the solution or at least an alternative vision of how things could work in the digital economy.

With regards to the robustness of the filmmakers' revenue model, we find that there are two broad patterns of incorporating Creative Commons licenses in a sustainable fashion:

1. Adopting Creative Commons licenses for "loss-leader" films: Loss-leader films are used for marketing and promotion of the filmmaker's brand. Filmmakers often provide free access to their work, especially in the early stages of their career when they try to establish themselves in the field and therefore, exposure is the safest way to gain attention and reach their audience, instead of locking their work behind a pay-wall. Their expectation is to gather an active and engaged fan community around their brand, which will follow them across different projects and will be willing to pay, through various different channels, for future productions.

2. Adopting Creative Commons licenses for films that act as a "portfolio" for their creators' expertise: These are films that are meant to showcase the filmmaker's expertise in a different, often related, domain and draw attention to online services and platforms targeted towards either the audience or other filmmakers. In this case open films function as examples of a platform's functionality and capabilities, while open content filmmakers aspire to become themselves leaders in digital innovation, assuming the position of the new intermediaries or enablers of the digital economy, providing the virtual infrastructure for production and exhibition of films from other creators. This second model borrows heavily on the IT industry innovation model and more precisely on the open source software business model where, while the products are free, customers have to pay for services related to the products.

It appears therefore that the ambitious plans and early expectations of web oriented independent filmmakers and CC advocates for an open content filmmaking movement that will completely replace the established filmmaking order since it "will radically change the ways we produce and consume films" as Lawrence Lessig proclaimed during the first Nordic CC Film Festival, has not quite come into fruition. Nevertheless, CC licenses and their application in

independent film projects can teach filmmakers important lessons about the legal aspects of their craft and how such legal aspects are inextricably linked with a project's socio-technical context. We will hereby go into more detail through the main findings of this thesis and discuss how such findings contribute to enriching our knowledge and understandings of the processes surrounding open cultural production in ICTs.

Focusing on the independent filmmakers' experiences, understandings and motivation for turning to the adoption of the Creative Commons licenses, it is made clear that contrary to the popular rhetoric of the Creative Commons proponents, creators do not simply follow the proclaimed inherent values in digital technologies by spontaneously embracing openness and inclusivity. Instead, we can witness that there are long standing power struggles within the general filmmaking industry. Through the narratives presented mainly in chapter four, we uncovered a deeply fragmented landscape where independent filmmakers feel disenfranchised and disadvantaged because of the mainstream industry's practices and they are willing to experiment with any tools in their disposal, be it legal, technological or social, so they can attempt to even slightly level the playing field. Independent filmmakers also provided us with insights on the reasons that motivated them to adopt the Creative Commons licenses. While examining the general landscape of the filmmaking industry we also manage to trace a range of changes and developments, mainly within the technological and legal domain, that led to the need for the licences' adoption and implementation within this specific creative community. Main industry practices are evaluated and critiqued by participants themselves, especially through the lens of such legal and technological changes. Accordingly, traditional methods of film production and distribution are perceived as dominated by very powerful industry intermediaries with rigid and tightly controlled systems creating bottlenecks for filmmakers trying to have their films produced and distributed. Filmmakers criticise the strict control and centralisation of resources by the mainstream industry, and therefore choose the alternative path of the "web route", as they characterise it.

By taking advantage of the affordances of digital technology tools such as digital cameras and editing software, which have significantly lower costs than the mainstream industry's standard equipment, independent filmmakers are now able to produce low budget films with minimal crew and cast. Given the low production costs, they are also able to experiment with novel forms of storytelling and innovative filmmaking techniques. And they also resort to digital technologies when it comes to the distribution of their films. Such films were often characterised by the participants as "made for internet". This may refer to them being distributed online through streaming or peer-to-peer technology, but also to the utilisation of social networks in their promotion and to the importance of building and maintaining a community around these films. Nevertheless, their experimental genres and forms that blend different audio-visual media in innovative ways, as well as their open, digital distribution approaches, make them unsuitable candidates for traditional copyright protection. What is more, filmmakers involved in such projects need to exercise a lot of caution when appropriating and remixing material for which they are not the legal rights holders. While they could claim that using pre-existing material in such transformative ways constitutes fair dealing and should therefore be considered as a copyright exception, they must still be prepared for possible costly and lengthy legal battles, for which the mainstream content industries, with their specialised legal departments and considerably more substantial economic means, are placed in an advantageous position. Such legal and industry related complexities combined with digital technology affordances, lead low budget independent filmmakers to endorse Creative Commons licenses as an alternative way to manage and surpass the legal intricacies surrounding their projects and therefore be able to experiment freely with innovative ways of digital production and distribution.

Through a close observation of open content filmmakers' practices, organisation and goals surrounding the production, distribution and revenue generation of their projects, we also note how their models for cultural production rely both on digital networked technology tools and on the old and established pathways

of the mainstream industry. What is more, open content filmmakers, as pioneers of digital cultural innovation, they seek to establish themselves as the new intermediaries of the networked cultural economy by providing platforms and services both to other filmmakers and to their audiences. These developments and hybrid practices are revealed throughout chapter five where I focused on the uptake and the positioning of CC licenses within independent film projects. Here I explored how open models work for independent filmmakers who have adopted them. I also drew attention to several key issues that contribute in varying degrees to the successful completion of CC licensed film projects in relation to their own stated goals.

There is a great variety of novel and innovative strategies for producing and distributing an open content licensed film and filmmakers appear to be constantly experimenting with alternative configurations of these strategies between different projects, aiming to harness the maximum potential of digital technologies. Open content filmmakers assert that removing the pay-wall between their films and the audience is the fastest way towards user adoption of their brand. They claim that they've come to the realisation that you can make more money by allowing access and re-use than by trying to stop it, so they optimise their business model in such a way that sharing their content works for them, not against them. They therefore manage to turn their competitors and consumers into a community of collaborators and friends. While allowing free access or even modification of their films is not a lucrative or sustainable endeavour in itself, when managed properly, it can become the catalyst for recognition of real profitable ventures. Amongst such ventures is the promotion of virtual infrastructure, most commonly taking the form of film production and distribution platforms; benefits deriving from building a strong community willing to support the filmmakers through crowdsourcing and crowdfunding; collecting user information as a means of market research; relying on the selling of products with added value like film related merchandise or High Definition DVDs; or capitalising on the experience of open content filmmaking through consultancy, advocacy and paid speaking gigs.

What is more, all these processes related to open film production, distribution, licensing, marketing and monetisation are inextricably linked, co-occurring and mutually shaping each other. As we untangle these elaborate, yet messy strategies, and evaluate the advantages and shortcomings of this multitude of processes for producing, monetising and distributing open content films, we can also draw some conclusion with regards to the types of films that are more suited to be licensed under CC and other instances where the licenses become irrelevant or even detrimental.

After explaining the details of the making of an open content film project, we focused on the shortcomings, frictions and conflicts stemming from the use of CC licenses and the factors that contribute to either some projects falling apart or to the license usage not contributing to a sustainable model for cultural production. We can therefore recount, through the actors' narratives, how sometimes CC licenses do not live up to the expectations of open content filmmakers or even to the goals stated by the Creative Commons people themselves. By following the participants' activities across diverse networks and the circulation of meaning they ascribe to the licenses, we identify the existence of a different set of actors with dissenting voices who resist the Creative Commons licenses' adoption. This is an often-neglected group in the relevant literature examining cultural peer production and open content licensing. Nevertheless, no budget independent filmmakers who choose not to use CC licenses, sometimes even when they are willing to offer open access to their films, appear to be very relevant to the construction of meaning and the diverse understandings and connotations that cultural creators ascribe to the licenses. Non-users of CC licenses are themselves a heterogeneous group including filmmakers who have used the licenses in the past but opted out of the licensing suite because of unexpected complications they encountered; filmmakers who criticise the licenses as promoting a "pirate mentality" amongst audiences who expect that in the online environment they can "get something for nothing"; and on the other end of the spectrum, filmmakers who regard the licenses as too restrictive and not adequately open for the promotion of free

circulation of cultural resources in the digital ecosystem. In chapter 6, through their tales of confusions and inadequacies, various key issues came to the surface that unless they are appropriately addressed and thoroughly thought over, they can jeopardise the success of a project and even tarnish a filmmaker's reputation. The examination of such problems and frictions can serve as a cautionary lesson not only to web-oriented independent filmmakers but also to the Creative Commons community, and it can serve as a compass for them to re-examine their priorities and goals, as well as the ways they promote and advocate the licenses' uptake.

The open content film community consists of an extensive network of actors, which includes filmmakers, consultants, IT experts, lawyers, audiences, or critics. These actors have different mind-sets, different social and professional contexts and varying ideological and practical motivations. This multitude of viewpoints and considerations has often been presented as an indication for the licenses' appeal and inclusivity, their wide applicability and their flexible modular configuration that allow creators to adjust the level of copyright restrictions from a wide setting to their local requirements. Nevertheless, such diversity in voices and objectives also leads to fragmentation within the open content filmmaking community and may also obscure what the application of the licenses can achieve for independent filmmakers. The main arguments put forward by CC proponents state that digital openness will bring about the democratisation of innovation, economics and culture through digital technologies. Creative Commons licenses are presented as an essential tool within this type of resources which are assumed to make manifest a transformation of the rigid, industrial structures of cultural production and unproblematically replace them with a new decentralised, networked, social creativity. But what we observe through examining the every day, situated practices of open content filmmakers presents a radically different picture. New and experimental business models are shown to co-exist side by side and not replace existing business models based on the traditional industry's structures and intermediaries. Filmmakers engage in both analogue and digital practices,



utilising both old and new distribution methods and intermediaries as a means to reach as wide an audience as possible within a segmented market. Filmmakers also diverge widely in their perceptions of what constitutes an open film project, a fact leading to the fragmentation of the open content film movement. What is more, collaborative peer production, which is hailed as the process underlying the “transformative” powers of networked technologies, is not often an objective in open film projects as most of them opt for a “Non-Derivative” version of CC licenses. But even when remixes and derivative work is encouraged, audiences do not appear to be sufficiently motivated to get involved and become peer producers of content as the relevant media studies literature seems to suggest. Open access practices are actually not as radically participatory, egalitarian or as efficient as CC proponents claim them to be, they do not challenge established modes of proprietary cultural production nor do they represent a break from the past but they are rather complementary and serve as an extension of previous forms of economic and creative organisation. It appears that CC advocates call for digital networked democracy and openness without examining the processes by which collaborative and open activities come together with commercial and proprietary approaches within and beyond the digital environment.

Research participants also point out to a number of other contradictions within the CC community and the license suite. Some note how CC is a private initiative, instigated mainly by lawyers and academics that are outsiders with regards to the workings of cultural production, and yet they suggest their top-down approach of license adoption as a solution to the problems surrounding bottom-up cultural creation and innovation. They are therefore regarded as detached from the actual practices of filmmakers, making technological deterministic proclamations about the future of an industry and practice that they do not thoroughly comprehend. What is more, they suggest copyright-based solutions to challenge and fix copyright-related problems. The effectiveness of their solution and the applicability of the licenses depend heavily on users understandings of copyright and legal issues in relation to digital content. These

understandings are often incomplete and based on second hand accounts and partial information, while they address very complicated legal issues whose precise meaning and intricacies are not clear even for the lawyers themselves. Consequently, CC licenses are occasionally regarded by the filmmakers as obscuring the legal implications of their work instead of facilitating and simplifying it, which is after all the principle goal of CC. Finally, CC is regarded by some participants as betraying another of their core values which is to “build a layer of reasonable and flexible copyright”, which can enrich the commons and stimulate cultural production. In this instance, issues of license interoperability come into focus and some filmmakers, especially those involved with the digital rights movement, point out that works licensed under CC do not form a commons, as they cannot be used and remixed freely with each other. Many CC licenses are not compatible with other CC licenses and this situation will only lead to further paralysis for creators who want to use CC licensed resources in their own work. CC is then perceived as not contributing to the commons or to open culture but instead creating separate zones that are detached and detrimental to a real and vibrant digital commons.

Open content filmmakers find themselves caught in between two opposing narratives: One proclaims the end of copyright and the replacement of vertically integrated cultural industries by democratic, inclusive and open collaborations for cultural production; the other laments the demise of any potential for developing sustainable models for cultural production in the digital environment where piracy prevails and hobbyists overwhelm the supply of creative output with low quality, user generated content. While there are frequent echoes of both of these views in participants’ narratives, their actual practices demonstrate that they have found ways to navigate around them and actually surpass such simplistic and deterministic dualities. As a matter of fact, this tension between mainstream industry practices and open culture dynamics is also echoed in the diverse motivations for the licenses’ adoption, ranging from pragmatic concerns which regard the licenses as simply a means to an end, to purely idealistic standpoints that value openness in itself and promote free

cultural as the only “ethical” choice, especially for the networked digital environment. And it is this dynamic interplay of such opposing forces, the underlying values they are embedded with, and the tensions they create that give shape to open content film projects and underscore their trajectories and related practices.

There are indeed significant changes and rearrangements that affect the ways we both produce and consume creative content but the direction of these changes and the resulting landscape is very unlikely to resemble either the utopian or the dystopian vision for the creative industries. What is more, change is always present within the industry and we should not expect that organisational, legal, or technological reconfigurations would eventually reach a widespread consensus and stabilise. The film industry landscape will continue to be shaped, readjusted and evolve through the practices, visions and ideological commitments of the heterogeneous set of actors that engage with it; as well as through the legal, technological and social tools they choose for their engagement. Participants therefore start to think about copyright more flexibly and choose to apply it more creatively, by adopting CC licenses for specific projects, embracing an “all rights reserved” option for distribution through the mainstream industry’s established channels and even dedicating their work to the public domain when they judge it appropriate. Through their various experimentations they aim to be amongst the beneficiaries of the rearrangements taking place within the filmmaking industry. By positioning themselves as the drivers of such changes, they become the innovators of the digital landscape, developing much-needed virtual infrastructure while simultaneously remaining the connectors of old and new, digital and analogue.

Insights based on the actual, situated, everyday practices of filmmakers and the patterns that emerge from such practices can point to the type of organisational and infrastructural changes that will be needed to support creativity within the digital domain. It is evident that the current institutional structures that support filmmaking, as well as the other creative industries, face serious re-

arrangements and challenges within the digital environment, so there is a need for legal and organisational change. Taking into account how innovative business models and sustainable digital practices develop gradually through the interaction of digital and analogue models of creation and monetisation, we need to draw attention to the fact that the struggles and conflicts about the shape of the digital content industries are not about the dominance of one type of organisational model instead of another, but about allowing and promoting the co-existence of different models and at different levels and market segmentations. Creators' livelihood and sustainability should be the primary focus. As we are not certain of the shape that these new practices will take, policy should enable creators to experiment more freely and hence we need to adopt the type of policies that promote experimentation in order to assist creators in finding which model works best for them. Creative Commons licenses, as an alternative copyright licensing system, have an important role to play in this regard but they should also be permeable to reformulation and discussion of instrumental goals rather than promoting an absolute and inescapable vision of the desirable shape of the digital economy.

## 7.4 Final Thoughts and Further Research

This research has hopefully contributed to a general understanding of open licensing implementation and resistance in ICTs'-enabled, independent film projects. To this end, I have provided detailed accounts of the making of open content films and of the understandings and interpretations of Creative Commons licenses by diverse actors. I believe that I have demonstrated, at least to some extent, the complex configurations and heterogeneous dynamics involved in the development of web-oriented film projects, as well as the ambiguous direction that cultural creation takes in the online environment.

Building upon the Social Shaping of Technology perspective, I have explored and uncovered the processes of social learning that arise through extended interaction between different actors around either opposition to or the uptake, integration and domestication of the legal innovation that is the Creative Commons licenses suite in independent film projects. Such social learning and domestication processes, with both the conflicts and re-interpretations that they entail, are at the heart of the dynamics shaping not only the Creative Commons licenses but also the development of complimentary digital tools, platforms and infrastructure meant to promote the smoother function of the online ecosystem for cultural creation. While the concept of domestication has been originally used to describe the appropriation and integration processes of technological artefacts by individuals and within the household (Silverstone, Hirsch and Morley 1992), it has also demonstrated how it can be successfully extended and applied to larger ensembles such as nation states (Brosveet and Sørensen 2000). Following such examples, in this thesis I aimed to extend the application of the concepts of domestication and social learning to the study of open content filmmaking, a complex social movement with intricate dynamics. Open content filmmaking can be regarded as a social movement around a set of legal tools, which are meant to respond to the challenges and reconfigurations that were set in motion by the introduction of digital, networked technologies. We can consequently observe how this is a sphere social, political, legal and

technological factors blend seamlessly, though not without tensions or conflicts. The Social Learning framework (Sørensen 1996; Williams, Stewart and Slack 2005) is therefore deemed essential for the purposes of this research, as it is wide enough to account not only for technological, legal and social innovation, but it also stresses on the processes of negotiation, the interactions and even conflicts that occur during the diffusion and domestication of such innovations, as diverse actors through heterogeneous networks attempt to make sense and situate technical or socio-legal innovations to their specific needs through their every day, trial and error practices.

At the same time, the limitations and shortcomings of this research indicate how there are still many different aspects and avenues for further research that would contribute to a more complete understanding of the spectrum of convergence between digital technologies, open licensing and new creative practices. One of the limitations of this thesis is related to the level of analysis and the necessary trade-offs between depth and breadth of knowledge on a given subject, which any researcher has to settle for. The approach I opted for was to look at multiple open content film projects in order to get a sense of how the whole creative community of open filmmakers negotiate and construct the meaning of Creative Commons licenses, and how they situate these open licenses both practically and symbolically in their day to day practices. I would expect that focusing in depth on just one open content film project, while perhaps it would lack the breadth of understanding such processes at a community level, would nevertheless, provide us with even more rich detail with regards to the intricate mechanisms surrounding cultural creation, which are set in motion by the specific project and even illuminate different dimensions and directions for further enquiry. Furthermore, although as previously mentioned the timeframe for conducting the research that this thesis is based on was extended through switching to part time study, given that open content film production can actually last quite a long time (as filmmakers themselves mention, it may take as much as seven or eight years), expanding

the research period even further would assist in giving a more complete and biographical perspective of open content filmmaking.

On the other hand, one could broaden the scope of the research by focusing on other creative communities, such as musicians or writers. This is also an obvious expansion to this research, as it would help provide insights on the specificities and diverse demands of different creative practices and could reveal aspects of digital cultural creation that are not relevant to independent filmmakers. An alternative approach to this project, which could perhaps illuminate different aspects of open cultural production, would be to focus not on open content film projects but on the filmmakers themselves and explore issues of identity, gender or their occupational careers within the industry. Although such issues fall outside the scope of this thesis, their investigation would contribute to a more complete understanding of the actors who set the processes of open cultural production in motion.

Another interesting angle would be to explore open licensing uptake by more established creators who are positioned already within the mainstream industry, independently of their creative area. When it comes to filmmaking there are only very few such established actors experimenting with open licenses, and this is mostly perceived as a marketing gimmick. In the music and publishing industries though, there are considerably more creators dipping their toes into networked production and open distribution of their work, and that would make them ideal candidates to explore open, digital cultural production in a different level than the ultra low budget, independent creators. Alongside looking to different creators and at different levels of industry integration, future research could attempt to expand the scope of open licenses beyond the Creative Commons, to include other less known open licenses for cultural content such as the Free Art License, the Open Publication License, the GNU Free Documentation License or even projects and creations that may retain copyright or not outright adopt an open license but they're still intended to circulate freely online.

Such research directions should be able to shed light on the digital disruption of the cultural industries and suggest ways to move forward from the mentality of “copyright wars” towards more fertile and insightful approaches to cultural creation. The landscape of digitally enabled, networked cultural production is still under-theorised, and this is partially because current scholarship is still relying on traditional dichotomies such as “professionals” and “amateurs”, “market” and “gift” economies or even strictly “independent” and “mainstream” players, without acknowledging the severe limitations of such Manichean reductions, as such apparently clear-cut notions with impermeable boundaries actually obscure the overall debate instead of contributing to it. Remaining reflexive, acknowledging and engaging more actively with the social processes surrounding legal and technological innovation, regardless of the ambivalence of their direction would open up illuminating perspectives in the comprehension of cultural work and openness in our digital economy.



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